

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

TARA EDWARDS,

Plaintiff,

-v-

Case No. 18-10735

SCRIPPS HOWARD MEDIA, INC.,  
d/b/a WXYZ-TV,

Defendant.

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PLAINTIFF'S MOTION TO COMPEL DOCUMENTS, ET AL  
BEFORE THE HONORABLE MAGISTRATE ELIZABETH A. STAFFORD  
Detroit, Michigan, Tuesday, November 13th, 2018.

APPEARANCES:

FOR THE PLAINTIFF:           MICHAEL N. HANNA  
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1 (Appearances, continued):

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FOR THE DEFENDANTS:

ELIZABETH P. HARDY

THOMAS J. DAVIS

Kienbaum, Opperwall, Hardy

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(Transcriber not present at live proceedings)  
(Transcript produced from digital voice recording)

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WITNESSES:  
NONE

EXHIBITS

NONE

1 Detroit, Michigan.

2 Tuesday, November 13th, 2018.

3 At or about 1:49 p.m.

4 -- --- --

5 THE CLERK OF THE COURT: All rise. Court is back in  
6 session, the Honorable Elizabeth A. Stafford, United States  
7 Magistrate Judge, presiding. You may be seated.

8 The Court calls case number 18-10735, Tara Edwards  
9 versus Scripps Media, Incorporated doing business as WXYZ-TV.  
10 Counsels, please place your appearances on the record.

11 MR. HANNA: Good morning, Judge. Michael Hanna on  
12 behalf of the plaintiffs and with me is my counsel, Warren  
13 Astbury and Angeli Murthy.

14 THE COURT: Good afternoon.

15 MS. HARDY: Good afternoon. Elizabeth Hardy on  
16 behalf of Scripps Media, Inc.

17 MR. DAVIS: Good afternoon, your Honor. Thomas Davis  
18 on behalf of Scripps Media, Inc.

19 THE COURT: Okay. I want to begin by addressing a  
20 couple of general observations. First, Mr. Hanna, half of your  
21 briefs are in the footnotes and it appears to me to clearly be  
22 an effort to increase the amount that you can write within the  
23 page limits and under rule, the local Rule 7.1, it does  
24 explicitly state that attempts to circumvent the local rule in  
25 any way may be considered an abuse of practice which may result

1 in the motion or response being stricken as well as sanctions  
2 under local Rule 11.1.

3 Another part of that is that the reason for the font  
4 rules, it used to be font 12, now it's font 14 is because we  
5 read an incredible amount and by putting so much in the  
6 footnotes single-spaced, it's very hard to read. So I am going  
7 to include in any order a warning that continuing to do that  
8 could result in your brief being stricken and/or sanctions  
9 because it's just not, not fair to have us try to look at half  
10 of a page of footnotes when your brief is supposed to be  
11 double-spaced for a reason.

12 The other thing that I wanted to address was the  
13 scope of discovery and Ms. Hardy, your brief in particular said  
14 repeatedly that the standard of discovery, the scope was the  
15 reasonably calculated to lead to admissible evidence. That  
16 hasn't been the standard for nearly three years. The scope of  
17 discovery is that parties may obtain discovery regarding any  
18 non-privileged matter that is relevant to any parties' claim or  
19 defense and proportional to the needs of the case considering  
20 the importance of the issues at stake in the action, the amount  
21 in controversy, the parties' relative access to relevant  
22 information, the parties' resources, the importance of the  
23 discovery in resolving the issues and whether the burden or  
24 expense of the proposed discovery outweighs its likely benefit,  
25 information within the scope notified not be admissible in

1 evidence to be discoverable and even though you did not use  
2 that terminology as much, Mr. Hanna, you're, really all of the  
3 or many of the discovery requests at issue seem to be based  
4 upon the prior reasonably-calculated language and so I do think  
5 that a lot of them are, on both sides are too broad and not  
6 tailored to the claims or defenses. So I do want to make sure  
7 that we're on the, all on the same page regarding the claims  
8 and I'm going to say what I understand and you all can tell me  
9 whether I have the correct understanding about what this case  
10 is about. It appears to be that the plaintiff was subjected to  
11 sexual harassment and complained about it, that the defendant  
12 investigated, silenced the plaintiff and imposed an  
13 insufficient punishment on Mr. Maddox and that that led to  
14 others believing the rumors about the plaintiff to be true and  
15 that because of that, the plaintiff was constructively  
16 discharged. Is that accurate?

17 MR. HANNA: Yes, Judge.

18 THE COURT: And in terms of the sex discrimination,  
19 can you explain to me what you mean by sex discrimination?

20 MR. HANNA: Sexual harassment, Judge.

21 THE COURT: Okay. So you're not saying that the  
22 plaintiff was treated, umm --

23 MR. HANNA: Not gender discrimination, Judge.

24 THE COURT: You're not saying that she was treated  
25 differently than similarly-situated people who aren't women?

1 MR. HANNA: No, Judge.

2 THE COURT: Okay, and the retaliation that you're  
3 alleging is what?

4 MR. HANNA: In essence, Judge, she objected to sexual  
5 harassment and because defendant's response to that sexual  
6 harassment was retaliatory, so they failed to take effective  
7 remedial measures. They, in ess --

8 THE COURT: Well, that's one thing. Retaliation is  
9 doing something that would deter someone else from making a  
10 complaint. I'm trying to -- and so I'm not asking you what  
11 they didn't do, I'm asking you what you're saying the defendant  
12 did in retaliation.

13 MR. HANNA: So a lot of these, the, the legal  
14 theories behind these claims overlap. So some of the hostile  
15 work environment factors overlap with the retaliation --

16 THE COURT: I understand that. I'm asking you  
17 specifically what you're saying the defendant did in  
18 retaliation.

19 MR. HANNA: There's many things and it's, the record  
20 is getting established in discovery. For example, Judge, my  
21 client alleges that she was not provided anchor opportunities  
22 after she complained about the sexual harassment. Prior to the  
23 complaint, she had a lot of anchor opportunities which is where  
24 she, you know, is able to anchor and she wasn't provided that  
25 opportunity after she alleged sexual harassment, so for

1 example, that's part of the retaliation. My client alleges  
2 that her schedule was switched in order to accommodate the star  
3 anchor who was promoted after the sexual harassment complaint.

4 THE COURT: In retaliation for the sexual harassment  
5 complaint, because you're saying that -- I understand that to  
6 be what you're saying was insufficient punitive measures on  
7 Mr. Maddox. Are you saying that because she made the sexual  
8 harassment complaint, she was given an unfavorable schedule?

9 MR. HANNA: And, and yes and the failure to provide  
10 her with anchoring opportunities and to allow her to advance  
11 and promote her career. She received those opportunities  
12 before she complained. She was the rebel rouser and she  
13 complained about sexual harassment. Thereafter, she was not  
14 provided with these opportunities.

15 THE COURT: Okay and I understand that your  
16 damages -- well, I guess I'll ask you. I understand the  
17 damages that you're alleging to be lost wages and benefits,  
18 exemplary damages and punitive damages?

19 MR. HANNA: No, Judge, we're -- exemplary damages and  
20 compensatory damages.

21 THE COURT: Well, what's the compensatory damages?  
22 So you're not alleging punitive damages?

23 MR. HANNA: No, Judge. Punitive damages are not  
24 permitted under ELCRA.

25 THE COURT: I thought I saw that in your complaint.



1 MR. HANNA: It was mistakenly in there, but we have  
2 since withdrawn that.

3 THE COURT: Okay. All right, so the compensatory  
4 damages, you said loss wages and benefits. What other  
5 compensatory damages are you referring to?

6 MR. HANNA: Well, it's the emotional pain and  
7 suffering, Judge.

8 THE COURT: Okay. Have you, umm, are you alleging  
9 garden variety emotional pain and suffering?

10 MR. HANNA: No, Judge.

11 THE COURT: Okay.

12 MR. HANNA: No, Judge. She has been suffering from  
13 panic attacks ever since this. She had prior issues, but  
14 she -- it resurfaced because of this and we will have, expert  
15 disclosures are due next week and that information will be  
16 provided.

17 THE COURT: Okay.

18 THE COURT: But she also has testified with respect  
19 to those issues in her deposition.

20 THE COURT: Okay. All right, thank you. Umm, okay,  
21 let's start, Ms. Hardy, with your motion. You can approach the  
22 podium.

23 MS. HARDY: Thank you, your Honor. I'd like to start  
24 the same place that the Court started with respect to the scope  
25 of discovery based upon the claim. I'd like to emphasize that

1 the sexual harassment claim in this case is under the state  
2 Civil Rights Act only, the Elliott-Larsen Civil Rights Act and  
3 the standard under that Act is materially different than the  
4 sexual harassment standard under Title 7 which is more commonly  
5 seen in Federal Court and because of the limitations of the  
6 Elliott-Larsen standard which is it only entails inherently  
7 sexual conduct. So it's not gender, it's not kind of related  
8 bad acts that might be in broader way part of what a Title 7  
9 plaintiff might claim as sexual harassment. It has to be  
10 conduct that is inherently sexual and under Michigan law, it  
11 has to be conduct that the plaintiff is aware of for it to  
12 impact her environment. So in that context, that's a much more  
13 narrow sexual harassment claim and the rumors that plaintiff  
14 tries to kind of sweep in under sexual harassment don't belong  
15 there. They also argue under retaliation that the rumors are a  
16 form of retaliation, but they do not fit as a matter of law  
17 under the sexual harassment claim.

18 Another thing that is very clear in Michigan law,  
19 well defined by the Michigan Supreme Court and reaffirmed by  
20 other appellate courts is that if a company takes appropriate  
21 remedial action upon receiving notice of a hostile work  
22 environment, then there is no respondeat superior liability.  
23 There would be no liability for the corporation and this is a  
24 claim of co-worker versus co-worker harassment. There is no  
25 question that appropriate remedial action was taken. The

1 plaintiff may not think in her view --

2 THE COURT: Well, I think that that's what's at  
3 issue, so --

4 MS. HARDY: But what's not at issue is that the  
5 conduct stopped and as a matter of law when the conduct stops,  
6 it's effective remedial action. So the plaintiff might not, it  
7 might not be what she wanted, it might not be what some other  
8 people would think is appropriate, but if it's effective in  
9 stopping the conduct, it is therefore considered appropriate  
10 remedial action as a matter of law.

11 THE COURT: Well, I don't want to get into the merits  
12 of the claim. I understand your argument and I'm not  
13 discrediting it. I understand the plaintiff's argument to be  
14 that the, umm, it wasn't effective in that she continued to  
15 suffer from the effects of the rumors and the presumption that  
16 what she was, her reports weren't true and that that  
17 environment continued to affect her such that she was  
18 constructively discharged. So I do like I said understand your  
19 argument.

20 MS. HARDY: And I only bring it up because in an  
21 effort to determine the appropriate scope of discovery, I just  
22 wanted to make clear the limited nature of a sexual harassment  
23 claim under state law and that rumors are not inherently sexual  
24 conduct. The fact that co-workers may be gossiping about her  
25 and Mr. Maddox is not part of the sexual harassment claim. I

1 mean, it wouldn't fit there as a matter of law and then with  
2 re --

3 THE COURT: Okay. I wanted to go one by one because  
4 I think that -- I do understand what you're saying in general,  
5 but I think it would be helpful to actually address the  
6 specific requests.

7 MS. HARDY: All right. Well, the first issue  
8 identified in our motion concerns RFP number two and that seeks  
9 all documents, all communications, you know, whether social  
10 media or e-mails or hardcopy correspondences, any kind of  
11 communication to and from plaintiff and Mr. Maddox and first  
12 we'd contend that that is certainly relevant because we need --  
13 we have a right to understand if we are going to have to  
14 confront potentially if our motion is not granted on Rule 56,  
15 we're going to have to confront the issue of what happened  
16 between the plaintiff and Mr. Maddox.

17 She is going to tell a story that we need to be able  
18 to put in context. I mean, we know from the current text  
19 messages already that they had a very complicated relationship.  
20 They were close personal friends. She exchanged numerous  
21 e-mails with him in which she said I love you repeatedly and so  
22 we need to understand not just what she considers to be  
23 evidence of sexual harassment, but the other dimensions of  
24 their relationship which would potentially explain if we were  
25 ever in front of a jury what the welcomed nature was of the

1 relationship so that a jury can have an appropriate assessment  
2 of what this relationship really consisted of. We definitely  
3 know there was a very welcomed nature to it. It may have had a  
4 turning point at some point in time, but we need to see all the  
5 communications, the friendly communications, the, umm,  
6 communications between close friends as well as the  
7 communications that she considers to be evidence of harassment  
8 and what plaintiff has done in the response is, first,  
9 stone-walled us and give us absolutely nothing until we filed  
10 this motion to compel. After we filed the motion to compel, we  
11 got roughly 200 pages of documents and we didn't receive those  
12 until 24 hours before plaintiff's deposition was set to occur.

13 THE COURT: Okay. So I think that Mr. Hanna is  
14 saying that that issue has been resolved. Can you tell me what  
15 is to the extent that you don't agree, what evidence is there  
16 that you haven't received everything that is responsive to that  
17 request?

18 MS. HARDY: Yes, I will. First if you look at the  
19 response, there's a number of amended responses filed by the  
20 plaintiff and if you look at the amended response 22, Mr. Hanna  
21 on behalf of his client, Ms. Edwards, says that he's only  
22 producing relevant documents and he doesn't define what they  
23 consider to be relevant documents. That is inconsistent with  
24 his obligations under the federal court rules. If he's  
25 withholding documents, he must define the category of documents

1 being withheld. We don't know that. We do know from the 200  
2 pages we saw and the testimony of the plaintiff at her  
3 deposition that there are some things that clearly were  
4 missing. For instance, we got text messages that she produced  
5 that show her messages to Mr. Maddox, but not the rest of the  
6 conversation. We don't see both sides of the conversation. We  
7 just get one portion of it.

8 THE COURT: No, I understood her saying that she --  
9 that they weren't available and I'm just wondering, I mean,  
10 here's something that I want to tell you that I learned that  
11 might be -- this may or may have nothing do with it, but I  
12 learned that i-messages are not -- they don't go by the carrier  
13 and whereas if you have a message that's going over Verizon,  
14 then Verizon's going to have those messages. So what will  
15 happen is sometimes there will be gaps in conversation because  
16 some of the portions of the conversation were exchanged on  
17 i-message. Did you receive these -- these were just documents  
18 or text messages that she pulled from her own phone or what was  
19 it?

20 MS. HARDY: Yes, that's what she testified to in her  
21 deposition that she's the one who did the search of her phone,  
22 gave her copies Mr. Hanna, Mr. Hanna provided whatever he chose  
23 to provide to us. So first, we don't know whether she had the  
24 skills to do an appropriate search. We don't know if there's a  
25 problem such what the Court's just identified as a potential

1     what could be, I don't know. We don't know what Mr. Hanna  
2     withheld from documents the plaintiff gave him because he  
3     deemed them not relevant and he hasn't told us what he has  
4     defined as the relevant scope of documents that he's been  
5     producing.

6             THE COURT: Now we're talking about RFP two, right?

7             MS. HARDY: Right now we are, yes.

8             THE COURT: Okay, so I'm seeing because his response  
9     starts at seven, but, umm, let me --

10            MS. HARDY: I'm looking at the response, the amended  
11     response to the RFP two and the last sentence says subject to  
12     and without waiving said objections, plaintiff shall make  
13     available for inspection and copying relevant documents that  
14     are responsive to this request without --

15            THE COURT: Let me ask Mr. Hanna about that.  
16     Mr. Hanna, first of all I want to just make a point that  
17     neither party can determine unilaterally what's relevant, so I  
18     do have a problem with you saying that you've produced relevant  
19     documents and not -- and also Rule 34 requires there to be  
20     specificity about what has been withheld. Are you -- can you  
21     tell me what you mean by relevant documents and what has been  
22     withheld?

23            MR. HANNA: Ms. Hardy's looking at the wrong  
24     document.

25            THE COURT: That's not -- I asked you a specific

1 question.

2 MR. HANNA: I'm not -- Judge --

3 THE COURT: Can you tell me what you have --

4 MR. HANNA: She's looking at the first-amended  
5 response. The second-amended response doesn't have any of that  
6 language. It just said --

7 THE COURT: Okay, it doesn't say -- because it does  
8 say that with regard to RFP seven so that's why I thought that,  
9 so are you saying that you are not withholding any documents in  
10 response to RFP two, that you have produced all responsive  
11 documents or are you disagreeing about the temporal time  
12 period? Is that the disagreement?

13 MR. HANNA: I -- I --

14 MS. HARDY: No, you know, your Honor, I can give  
15 you --

16 MR. HANNA: -- can clarify --

17 THE COURT: Wait, I need one person to speak at a  
18 time.

19 MS. HARDY: I can give you numerous --

20 MR. HANNA: If I can clarify, Judge? I think that  
21 question was directed at me.

22 MS. HARDY: Your Honor, I thought you looked at me,  
23 so I started to respond.

24 THE COURT: I asked whether the temporal proximity  
25 was and I did look at -- is the temporal proximity in dispute



1 here?

2 MR. HANNA: Judge --

3 MS. HARDY: Not that I'm aware of.

4 THE COURT: Okay. All right. Go ahead, Mr. Hanna.  
5 I see you're bursting and I don't want you bursting because  
6 that's not helpful, so can you tell me whether you have  
7 produced all documents responsive to RFP two?

8 MR. HANNA: Yes.

9 THE COURT: Umm, and, umm, so you've previously  
10 produced them after July -- January 1st, 2014 and now you're  
11 saying you produced all documents between the plaintiff and  
12 Mr. Maddox?

13 MR. HANNA: Judge, here's what happened. A couple  
14 days before plaintiff's deposition, defendants conferred prior  
15 to filing a motion to compel. Plaintiff responded and pointed  
16 out the fact that the parties previously had an agreement with  
17 a temporal scope as indicated in defendant's very own  
18 documents. There --

19 THE COURT: You know what? If you're going to tell  
20 me the history of the dispute, I don't want to --

21 MR. HANNA: I'm just trying to --

22 THE COURT: -- hear the history of the dispute. My  
23 question is whether you have produced all responsive documents  
24 to RFP two and you're not withholding any documents.

25 MR. HANNA: I would just like a brief opportunity to

1 explain myself.

2 THE COURT: No, I want a yes or no answer. Have you  
3 produced all the documents that are responsive to RFP two?

4 MR. HANNA: Yes, Judge. Plaintiff has produced all  
5 documents in her possession, custody and control and she's also  
6 testified to that in her deposition. I can show you the  
7 deposition testimony if you'd like to confirm that.

8 THE COURT: Okay. Ms. Hardy, why are -- on what  
9 basis would I find it that he's not being honest about that?

10 MS. HARDY: I'll give you three things. Facebook.  
11 That's included within the definition of documents in our  
12 document request and so it's responsive to number two.  
13 Plaintiff testified on page 47 of her deposition that she had  
14 private messages on Facebook with Mr. Maddox and when I asked  
15 for -- one, we've received nothing from Facebook and it's very  
16 clear from the long heated dialog with Mr. Hanna on the record  
17 that he has no intention of producing anything from Facebook  
18 because he accused me of harassing her by asking her Facebook  
19 messages --

20 THE COURT: Okay, I just -- give me the -- so you  
21 said the private discussions on Facebook?

22 MS. HARDY: Private messages to --

23 THE COURT: Private messages on, yeah.

24 MS. HARDY: -- him on Facebook, page 47 of her August  
25 29 deposition. She also testified on page 53 of her deposition

1 that she had Instagram exchanges with Mr. Maddox and she has  
2 produced none of those and she also said that she had Twitter,  
3 a Twitter account and Twitter messages with him, that she had  
4 not searched her Twitter. So those are three examples and then  
5 of course there's not only in the answers to interrogatories,  
6 but in his brief he used the wording that he was producing  
7 documents that reaffirm sexual, the sexual harassment she was  
8 forced to endure.

9 THE COURT: Well, I'm saying that, umm -- oh, I see  
10 what you're saying, which affirm, umm --

11 MS. HARDY: That appears to be a limitation --

12 THE COURT: Okay --

13 MS. HARDY: -- that he's only produced documents --

14 THE COURT: Mr. Hanna, is that a limitation?

15 MR. HANNA: Judge, the --

16 MS. HARDY: -- that support --

17 MR. HANNA: -- the full sentence says plaintiff  
18 gladly produced all communications in her --

19 THE COURT: I'm reading it. I'm just saying that it  
20 does say which reaffirm that you produced all communications  
21 regardless of temporal scope which reaffirm the sexual  
22 harassment she was made to endure. That might not be what you  
23 meant, but I'm trying to figure out whether you're saying that  
24 you've produced all documents which to reaffirm the sexual  
25 harassment or whether you've produced all documents?

1 MR. HANNA: All documents, Judge, and for the record  
2 they do have the Facebook communication. It was one message  
3 where he asked her about a Caucasian lady on his profile pic  
4 and he said who's that snow hoe and that message was produced.

5 THE COURT: Instagram and Twitter?

6 MR. HANNA: There is no indication -- if she could  
7 point out to where she said that because that was not her  
8 testimony, but I'm happy to take a look at and see what Ms.  
9 Hardy's referring to.

10 THE COURT: Okay. Can someone tell me where --

11 MS. HARDY: Page 53 for Instagram, line six.

12 THE COURT: Can you tell me which, where I find the  
13 deposition? I know I've seen it, but I --

14 MS. HARDY: I'm not sure if the whole deposition's  
15 been produced or not.

16 MR. HANNA: Well, we have, that's the page and line  
17 number.

18 MS. HARDY: I can hand to the Court page --

19 THE COURT: I'm sorry. Whatever's been filed. Okay,  
20 I'm sorry. Go ahead. I see excerpts of plaintiff's deposition  
21 transcript. Do you have the full deposition transcript with  
22 you?

23 MS. HARDY: I do.

24 MR. HANNA: I do, Judge. It does say that for the  
25 record and I did not get a chance to redirect my client and I

1 think that was a mistake. I think that's supposed to be  
2 Facebook. I don't think she has anything on Instagram with  
3 Mr. Maddox.

4 THE COURT: Well, this is something that you'll have  
5 to confirm.

6 MR. HANNA: Excuse me, Judge. I think she, umm, my  
7 co-counsel just reminded me. She's actually referring to  
8 photos on Instagram which were produced. Page 110. 110, 111  
9 and 112 and 113 and 114 and 115 and that's all.

10 MS. HARDY: Well, I find what Mr. Hanna said about  
11 Facebook, I mean, I don't know, I'll have to look back and see  
12 if there's such a document and if we can identify it as a  
13 Facebook, but he gave quite a lecture on the record to make  
14 quite a point saying --

15 THE COURT: Okay, here's the thing --

16 MS. HARDY: -- we're not entitled to any social  
17 media.

18 THE COURT: Okay, so --

19 MR. HANNA: Not true, Judge.

20 THE COURT: Please don't do that. I'm going to, umm,  
21 Mr. Hanna, order you to confirm with your client that you have  
22 produced all messages that she exchanged with Mr. Maddox on  
23 Facebook, Instagram and Twitter and you can provide Ms. Hardy  
24 with the assurances that you've done that. If you discover  
25 more of them, please disclose it.

1 MR. HANNA: For the record, Judge, plaintiff's page  
2 132 is the confidential message between Malcolm Maddox and Tara  
3 Edwards where he begins umm, who's the snow hoe in your profile  
4 pic and is she loose, I need a girlfriend and I need one right  
5 now. It was produced.

6 THE COURT: Okay, so I took you at your word that you  
7 have provided something and I'm saying that you should confirm  
8 with the plaintiff that she has disclosed all messages on  
9 social media that she had with Mr. Maddox and that you should  
10 either turn over -- well, both turn over anything else that's  
11 been discovered and confirm in writing that the answers are  
12 complete, that the answer to that RFP is complete.

13 MS. HARDY: Your Honor, might your order also compel  
14 them to explain what they've done, too, in the search process  
15 so that we can understand whether or not they have been  
16 thorough in the search effort? It was very -- it was -- I went  
17 round and round with plaintiff in the deposition and I don't --

18 THE COURT: You know, the thing is that I don't want  
19 to do is rehash all these arguments because it's clear from  
20 reading the briefs, it's clear from reading the portions of the  
21 deposition, it's clear from when I started here that you all  
22 have, umm, a lot of, umm, frustration with one another. I want  
23 to tell you while I'm on this subject, I have this theory about  
24 why civil attorneys are less civil with one another than  
25 criminal attorneys and my theory is that they are in

1 depositions with one another without a referee and that one or  
2 the other is being obstructive and that you can really develop  
3 some negative feelings.

4           Mr. Hanna, I'm going to tell you I'm not here to rule  
5 on the and in fact it hasn't been referred to me, you were  
6 objecting over and over again and I haven't seen all the  
7 depositions and I don't know to what extent that Ms. Hardy was  
8 going to do that, I don't want you to look at it and then try  
9 and prove to me or have an argument with me. I'm going to just  
10 tell you that it's not productive and that when someone like me  
11 is looking at it and trying to make a decision, that that's not  
12 advancing your client's position, it's exhausting and that's  
13 why I am going to today limit the efforts of either side to  
14 rehash what happened in the past. I'm going to try to do my  
15 best to help everybody get the discovery that they need which I  
16 think, you know, is within the scope of what should be  
17 disclosed. So Mr. Hanna, do you have any objection to  
18 providing to Ms. Hardy a description of the efforts of the  
19 manner in which you and your client searched for the  
20 communication between her and Mr. Maddox?

21           MR. HANNA: Judge, if you go to page 61 through 68 of  
22 the deposition, they thoroughly went over it.

23           THE COURT: And I'm going to need you to answer  
24 questions that I ask you and not tell me what you want to tell  
25 me. I asked a very specific question; do you have any

1 objection to providing a description of the manner in which you  
2 searched for the documents responsive to RFP two?

3 MR. HANNA: I will not object so long as defendant  
4 similarly answer our request for production of text messages in  
5 a similar manner.

6 THE COURT: I'm not at your motion yet so please  
7 limit it to what I'm asking you because we can be here until  
8 six o'clock if we keep on having to address some of these, umm,  
9 get sidelined so I'm going to -- Mr. Hanna, you should also  
10 provide a description in writing of what measures you took to  
11 search for responsive documents. I do want to emphasize that  
12 sometimes parties get to the point where they just don't  
13 believe each other, I don't believe you searched for  
14 everything, but once a party has said I searched and this is  
15 everything that I have, then it's not really up to the Court to  
16 decide whether or not unless there's evidence that, you know,  
17 that it's not truthful, so there's a limit to how much we can  
18 really test how full the response is, but I, as I said, will  
19 try and make sure everybody has a chance to address that.

20 So the next one --

21 MS. HARDY: Is three. I think we can deal with three  
22 and four together if that's acceptable?

23 THE COURT: Okay. Let me just see.

24 (Pause)

25 THE COURT: Okay. So Mr. Hanna has stated that



1 plaintiff has produced all responsive documents in her  
2 possession, custody or control to the RFPs as more narrowly  
3 tailored and it's your position that that's not true?

4 MS. HARDY: Well, umm, he hasn't defined what  
5 self-imposed or what he's imposed as the narrowly tailored,  
6 umm, scope.

7 THE COURT: No, what I'm saying is that you, you  
8 narrowed -- you tailored the request to documents regarding  
9 Maddox, the father of plaintiff's child or her pregnancy,  
10 sexual matters, rumors, retaliation, harassment, any complaints  
11 plaintiff or others made regarding WXYZ and any document that  
12 plaintiff believes reflects sexual harassment, hostile work  
13 environment or retaliation and he said with no limitation  
14 plaintiff has produced all responsive documents in her  
15 possession, custody or control responsive to defendant's  
16 categorical limitations. So --

17 MS. HARDY: I can give you an example of one that,  
18 one I know he held back until it became clear that such a  
19 documents existed and then he produced it in the middle of the  
20 deposition, but it's one after he made that representation he  
21 should have produced and he did not and that's Val Morris'  
22 e-mail, the one that concerns -- Val Morris is a co-worker of  
23 the plaintiff.

24 THE COURT: He's the one who said that he was on the  
25 phone that --

1 MS. HARDY: They were talking about Mr. Maddox.

2 THE COURT: And then the attorney got on the phone?  
3 Is that the one you're talking about?

4 MS. HARDY: And then she was purporting to have a  
5 personal conversation with Ms. Morris and then all of a sudden  
6 her attorney pops on the phone and she was very upset, she  
7 thought she had been tricked and it clearly is responsive to  
8 Mr. Maddox, everything concerning Mr. Maddox and, umm, you  
9 know, complaints about others concerning with WXYZ. It should  
10 have been produced. It was not. He had it clearly. It was  
11 something he could produce at the deposition once she testified  
12 it existed, but had we not had her testimony to know that it  
13 existed and had I not said where's that document, we don't have  
14 that, presumably we would not have received it.

15 THE COURT: Mr. Hanna?

16 MR. HANNA: The text message states Tara, I just want  
17 you to know I feel really blindsided about all --

18 THE COURT: I did read it, so.

19 MR. HANNA: Okay. So first of all, it doesn't say  
20 Maddox, but I'm not even arguing the relevance, Judge. We  
21 did -- they conferred regarding the text messages on a Friday.  
22 We produced everything on a Monday and Tuesday and then this  
23 came up on a Wednesday. I didn't hold anything back. I said  
24 can we take a five-minute break. I went to see my client. We  
25 gave it to them, we produced it. We have searched all her

1 records for messages, we've produced everything including that  
2 message.

3 THE COURT: But this, umm, the fact that that wasn't  
4 included in the production and it is I think clearly related to  
5 the alleged harassment leads the defense to believe that you  
6 are holding documents back. Have you done anything since you  
7 discovered that there was that document and it was left out to  
8 double check?

9 MR. HANNA: She has searched her text messages and  
10 she has searched her e-mails and her Facebook. I mean, she's  
11 getting to the point where she's like paranoid about it and I  
12 said everything. We have given them everything. I know you --

13 THE COURT: And I understand that it's overwhelming.  
14 One thing that one of the, the factors in proportionality is  
15 the amount in controversy and the defense is right that by  
16 asking for 100 million dollars, Ms. Edwards is opening herself  
17 up to a, and I'm not agreeing with everything. I think that  
18 some of these requests are too broad, but that means that Ms.  
19 Edwards is going to be burdened, not necessarily unduly  
20 burdened, but I think that it does make sense to order you to  
21 provide the same sort of description in writing, first of all  
22 the assurance that, you know, to check with Ms. Edwards, make  
23 sure that she has produced everything and to provide the  
24 defense with and this is for RFP three and four, right?

25 MS. HARDY: Correct.

1           THE COURT: The same thing, description of the  
2           efforts taken to search and confirmation that you produce  
3           everything and of course Mr. Hanna, to the extent that you had  
4           that document in your possession, you need to check to make  
5           sure that Ms. Edwards hasn't turned over anything to you and  
6           that you neglected because you, not necessarily purposely, but  
7           you didn't turn that over so do you understand that? Okay.  
8           All right, so that takes us to five?

9           MS. HARDY: Yes, your Honor. That concerns the issue  
10          of whether all e-mails that she forwarded from her work address  
11          to her personal e-mail address have been turned over.

12          THE COURT: But I thought that she said that she had  
13          turned everything over to her, that she sent to her personal  
14          e-mail address, but you want her to disclose anything that she  
15          sent from her work address to third parties.

16          MS. HARDY: Yes, we do, your Honor, and --

17          THE COURT: But how do you get to the within the  
18          possession, custody and control if these aren't documents that  
19          she forwarded to third parties and I'm going to say something  
20          else about is this that you said that it might show that she  
21          was forwarding documents inappropriately or in violation of the  
22          company policy. That's not at issue so --

23          MS. HARDY: I don't believe we said that. That's the  
24          theory plaintiff has as to why our motivation for seeking those  
25          documents is improper. We're not looking for violations of

1 company policy, we're looking for communications that --

2 THE COURT: I'm reading from your brief. It says it  
3 could include materials that plaintiff deleted from her work  
4 e-mail, it might also show that plaintiff was forwarding WXYZ  
5 documents outside of the company inappropriately or in  
6 violation of the company policy.

7 MS. HARDY: Well, if that's indeed what it says,  
8 that's not our purpose and I, umm, I withdraw that. The  
9 purpose is to find out what communications she has had with  
10 potential witnesses and what we don't think she's done to date  
11 is search her sent box on her personal e-mail to confirm what  
12 she had, may have forwarded from her personal e-mail to third  
13 parties who could be witnesses in this case.

14 THE COURT: But it says, the request is documents  
15 that she sent from her e-mail address to her personal e-mail  
16 address or any address outside of defendant's e-mail system, so  
17 what I understood her to say is that she searched her personal  
18 e-mail address and I understood you to be asking for documents  
19 that she might have sent to a third party. I really don't see  
20 any evidence that she sent documents -- that you have any  
21 specific evidence that she sent something to a third party, but  
22 I also don't know how I would find that documents sent to a  
23 third party are without her possession, custody or control  
24 without more of a foundation.

25 MS. HARDY: Well, you know, she could send e-mails

1 directly from the work address to a third party or she could  
2 take an indirect route and send them from her work e-mail to  
3 her personal e-mail and then to a third party. We're  
4 interested in --

5 THE COURT: That's not what I see the request saying  
6 though.

7 MS. HARDY: Well, I would, you know, my argument is  
8 is that it's encompassed within -- we want to know what's been  
9 sent from her work e-mail, whether it went directly from there  
10 or whether it first went to the personal e-mail and then to a  
11 third party.

12 THE COURT: But if she produced whatever she sent  
13 from her work e-mail to her personal e-mail, then that would  
14 capture whatever she forwarded from her personal e-mail to  
15 someone else if it came from the work e-mail and went to the  
16 personal e-mail.

17 MS. HARDY: We wouldn't necessarily know the category  
18 of documents though that she sent on to a third party just  
19 because she produces what went from the work to the personal,  
20 so then the last point of inquiry is of that category of  
21 documents that went to her personal e-mail from the work, which  
22 ones did she forward on to third parties.

23 THE COURT: Does that say that in the request?

24 MS. HARDY: It does not expressly say that, no.

25 THE COURT: Well, then I'm not going to order them

1 to -- I'm not going to compel them to produce something that  
2 wasn't requested.

3 MS. HARDY: I think it's encompassed in, inherently  
4 encompassed because it's a just an indirect way of doing it,  
5 but it does not expressly say that, so I --

6 THE COURT: But, I mean, if they produced what was  
7 sent from her work e-mail address to her personal e-mail  
8 address, then I think that that exhausts what I can assume is  
9 in her possession, custody and control. Now if you're saying  
10 that you want to find out what she shared with third parties,  
11 that's not what that request says and I don't think that it's,  
12 it's assumed, it can be assumed.

13 MS. HARDY: Okay. We can file an additional request  
14 to cover that.

15 THE COURT: Okay, so I'm going to deny the motion to  
16 compel anymore answers to that one. So number seven, I think  
17 that number seven doesn't include any -- this is  
18 extraordinarily broad to me. All notes, whether plaintiff  
19 identified or anonymous of any conversation between any  
20 employee and so this is one of those reasonably calculated to  
21 lead to admissible evidence, but not tailored to address a  
22 claim or defense.

23 MS. HARDY: What specifically led to this one, your  
24 Honor, was in her complaint to HR, she -- her written complaint  
25 to Barb Roethler which then went to HR, she expressly said in

1       that document that she had other notes to support her claim.

2               THE COURT: But that's not what this requests.

3               MS. HARDY: It would be encompassed within that.

4               THE COURT: But what I'm saying is you need to narrow  
5       it to, you need to tailor it to that, you know, documents to  
6       support her claim or, you know, if you narrowed it like you did  
7       the, umm, the ones in three and four --

8               MS. HARDY: Um-hmm, you mean to the docket --

9               THE COURT: -- I mean, this is just any note, any  
10      posted note, any, you know, hey, meet you at seven, and so --

11              MS. HARDY: I understand your point and we will file  
12      a subsequent request to narrow it.

13              THE COURT: Okay. I'm wondering to some extent with  
14      some of these that I think on both sides I think need to be  
15      narrowed, to what extent -- I mean, instead of going back and  
16      forth with more discovery requests, you could sit down and meet  
17      and confer and try and agree on a scope. I have already said  
18      that I realize that there's frustration on both sides, but I  
19      think that that could be more expeditious than filing another  
20      request for production of documents and then, you know, and I  
21      will say the boiler plate objections, people, everyone still  
22      files them, but they are totally meaningless and really the  
23      amendments to Rule 26 were intended to eliminate those boiler  
24      plate objections and for just and especially the subject to,  
25      but without waiving said objection, I'll provide you with



1 documents, but I'm withholding some others, you know, there's  
2 supposed to be a real clarity about what is being produced and  
3 what's being withheld and the boiler plate objections, I've  
4 just never seen them have any impact whatsoever on a judge's  
5 decision. In fact, a lot of the -- there's plenty of case law  
6 that says that reliance on those boiler plate objections acts  
7 as a waiver of any objection at all because they're  
8 meaningless. So instead of having you submit new requests and  
9 Mr. Hanna submit his new request and the parties exchange  
10 boiler plate objections and, I'm just wondering whether you  
11 think it would make sense to and I'll ask this of both of you  
12 you, to take some of these under advisement because I think  
13 that there's a more, there's a narrower request within this  
14 request that would be proper and then to come back and try and  
15 address any objections after you all have met and conferred.

16 MS. HARDY: That makes sense and we will make that  
17 effort.

18 THE COURT: Mr. Hanna, is that something that you  
19 would agree to?

20 MR. HANNA: Sure.

21 THE COURT: Okay. So I'll take seven under  
22 advisement.

23 MS. HARDY: And 19 I think we covered in conjunction  
24 with RFP two. My Space and YouTube was not covered, but on the  
25 other hand I haven't asked her whether there is anything in

1 conjunction with My Space and YouTube so I don't, I'm not in a  
2 position to say anything's missing.

3 THE COURT: Well, yeah and I do have a concern about  
4 19. I do think that it is, it's from, you know, eight years  
5 and it seems like, you know, and I don't know when you say  
6 plaintiff's emotional state, I also didn't know what that  
7 meant, you know, a smiley face next to somebody's, umm, an  
8 emoji smiley face? I think to the extent that it is regarding  
9 plaintiff's employment with WXYZ or, umm, and the photographs,  
10 you say plaintiff's, photographs of plaintiff in which either  
11 her or current or former employees at WXYZ. Is that like every  
12 picture of her?

13 MS. HARDY: That she has in her possession that  
14 might, umm, you know, we have a constructive discharge charge  
15 claim here so it's not just sexual harassment retaliation and  
16 her complaint was investigated and resolved in January or  
17 February of '15; she didn't resign until December 31, '16. So  
18 what's going on between her and other employees? Photos tell  
19 you a lot about her work environment.

20 THE COURT: But this isn't limited to that relevant  
21 time period and some young people take, you know, a selfie  
22 every hour or more. They take -- so I'm not sure how  
23 meaningful a photograph, eight years of photographs would be.  
24 It does -- and this is not limited to photographs of her with  
25 any former employees at WXYZ, it's any photograph of her.

1 MS. HARDY: Well, it's any photograph that plaintiff  
2 has posted in which either plaintiff or current or former  
3 employee appear, so they obviously --

4 THE COURT: You should see my nephew's Twitter feed,  
5 okay? It's ridiculous and I'm just giving an example -- don't  
6 tell him I said that about him, but he -- you just -- I don't  
7 know whether she is one of those people who takes a photograph  
8 every hour. I don't know how probative it would be of her even  
9 smiling because I don't think that people are necessarily  
10 trying to display, you know, any bad feelings they're having as  
11 they take a million photographs of themselves. I would suggest  
12 that you all talk about RFP 19, but I will tell you that this  
13 is much too broad to me. It does have the markings of a  
14 fishing expedition and the scope seems to be --

15 MS. HARDY: We're just trying to get a picture of her  
16 workplace environment and relationships and I certainly take  
17 your point about limiting the time period, but from the time  
18 that she claims that it became so intolerable that she was  
19 compelled to resign her employment, it is relevant to see what  
20 kind of exchanges she's having with her colleagues and her  
21 friends at work to get a --

22 THE COURT: That's not what this requests though.

23 MS. HARDY: Well, it --

24 THE COURT: This doesn't request between her  
25 colleagues and friends at work during that period of time.

1 MS. HARDY: It covers her employment, it covers her  
2 mental emotional state, umm --

3 THE COURT: And again, I don't know what that means.  
4 I don't know whether that means every emoji with a smiley face  
5 and I just don't know how probative any of that would be. I  
6 don't see any evidence that showing her taking a smiling emoji  
7 would be evidence that she actually is not suffering at work,  
8 so I do think that this is, umm, that there are relevant  
9 documents or there are -- there could be relevant information  
10 within the social media, especially if she's posting things  
11 regarding her employment at WXYZ or with current or former  
12 employees, photographs with her and employees at WXYZ or at  
13 WXYZ. I don't know if she took any at work --

14 MS. HARDY: I don't know either, umm --

15 THE COURT: -- but every dinner that she has with her  
16 family, every --

17 MS. HARDY: This doesn't, I don't think it covers  
18 personal. I mean, it's related --

19 THE COURT: Photos of plaintiff.

20 MS. HARDY: Well, photos of plaintiff regarding her  
21 employment with defendant or relating --

22 THE COURT: That's not what it says. It says photos  
23 plaintiff has posted in which either her or employees of WXYZ  
24 appear. So that would be --

25 MS. HARDY: Well, yeah. I mean, I consider that work

1 related because it's with an employee.

2 THE COURT: Well, no. It says either her or  
3 employees, so it's every picture of her within the last eight  
4 years.

5 MS. HARDY: I, I see your point and I agree with  
6 that. I did intend that, but that's sloppy wording, so.

7 THE COURT: But if you're saying pictures with her  
8 and an employee or regarding her employment and Mr. Hanna, you  
9 can pipe in here in you'd like about what you think the scope  
10 of what would be relevant on social media would be.

11 MR. HANNA: Yeah, I mean, Judge, we produced her  
12 Facebook message with a perspective employer. We've produced  
13 several pages where she was anchoring on the desk. They  
14 encouraged her to get out there on social media and post all  
15 these pictures where she's on the desk anchoring. We've  
16 produced all that. We've produced, umm, she's only had one  
17 message, like, communication with Malcolm. That was the snow  
18 hoe one we referenced. We've produced that. We've produced it  
19 and as your Honor said that this request is not proper.

20 THE COURT: Have you searched for photographs of her  
21 with current or former employees at WXYZ and -- well, I'll just  
22 ask you that general.

23 MR. HANNA: Have we searched any, all of her pictures  
24 on all of social media for any -- what we've produced and what  
25 we've searched for are pictures that we thought were relevant

1 to her employment which would be pictures with her on the  
2 anchor desk. Does she have a random picture with one of her  
3 employees somewhere? I, I don't know. I mean, the search is  
4 so overbroad and --

5 THE COURT: Well, I'm trying to narrow it, but I  
6 don't think it's and I certainly don't know how many  
7 photographs that she has with, you know, on any of that social  
8 media in general. If it's overly-burdensome though, it's your  
9 job to show it. It's your burden to show that.

10 MR. HANNA: I would argue, Judge, that it's not  
11 relevant. Even if she had a picture with one of her random  
12 co-workers in 2011, I don't see how that's remotely relevant.

13 THE COURT: I agree 2011 is too, it's too early.

14 MR. HANNA: Even if she had a picture with her  
15 colleague in --

16 THE COURT: Unless it's with Mr. Maddox of course,  
17 but during the time period in which she's saying that she  
18 was -- when did she say that the sexual harassment began?

19 MS. HARDY: 2012 through July, 2014 was the period.

20 MR. HANNA: That's not correct. It was until her  
21 constructive discharge in 2016, but --

22 THE COURT: Okay, so she was saying she was sexually  
23 harassed, so I think that any photographs, any evidence in her  
24 social media connected to her work is relevant.

25 MR. HANNA: Well, for the record, Judge, we've

1 produced all pictures she has with Malcolm.

2 THE COURT: No, that's not what I said though. I  
3 understand that you said that, but I think that messages about  
4 her employment from 2012 to 2016, I think that that is  
5 relevant.

6 MR. HANNA: What does that mean about her work? Hey,  
7 what's up with this assignment? Oh, are you going to next  
8 week? Okay, fine, see you later? I mean, there could be  
9 thousands of that type of communication.

10 THE COURT: Well, but you haven't provided that.

11 MR. HANNA: Well, I don't know what they're asking  
12 for quite frankly. Their request is so overbroad, it's not  
13 even based on search terms, it's categorical, so for us to  
14 complete their whole search, we would literally have to review  
15 every thing she's ever done on social media.

16 THE COURT: You can actually do search terms on  
17 Facebook by the way.

18 MR. HANNA: The search terms search though. This is  
19 a categorical search.

20 THE COURT: In terms of WXYZ, Channel Seven, you  
21 could actually do that --

22 MR. HANNA: Yeah, we would be willing to do --

23 THE COURT: -- but there are, there are relevant,  
24 umm, I do think that as written, this request is overly broad,  
25 but I think that as you're saying, it's too narrow and so I'm

1       trying to find --

2               MR. HANNA: Yeah, I mean, I couldn't -- as far as the  
3       overbroad analysis, Judge, because it's not a search term  
4       search, I can't come back and tell you well this produces 5,000  
5       hits and therefore I can't search it. I don't know how many  
6       hits it would provide because it's not based on search --  
7       because it's based on categories, you'd literally have to  
8       review everything. You can't just say the word sex and  
9       whatever appears in sex, you'll review that to see if it's  
10      relevant because it's --

11             THE COURT: But you haven't provided any information  
12      about how challenging that would be.

13             MR. HANNA: Because I can't, I don't know what their  
14      search is because it's not -- I mean, we're --

15             THE COURT: But you're saying she would literally  
16      have to go through eight years and I don't know, I don't know  
17      what that means. Does that mean that it will take her, you  
18      know, a week to look through it? There's no information about  
19      that and the fact that it causes, again I think Ms. Hardy is  
20      right. She is suing for 100 million dollars and so that  
21      proportionality factor is, you know, is big. The fact that  
22      this is a civil rights case and it has a fee shifting because  
23      under Elliot-Larsen there's the fee shifting, isn't there?

24             MS. HARDY: Yes.

25             THE COURT: So that again, that makes -- these are



1 things that cause, indicate that discovery can generally  
2 speaking be more expansive than some other cases and, umm, the  
3 parties' relative access to information. She has it, the  
4 defense doesn't, so in terms of you saying it will be, you  
5 know, work for her, I'm not surprised, but at the same time if  
6 there are Facebook messages or Twitter tweets and they reflect  
7 her discussing her employment, at least, you know, and I would  
8 say, you know, more likely during the period of, the complaint  
9 was made in 2015?

10 MS. HARDY: The complaint was made in '15 and she  
11 claims that the harassment occurred, started in 2012 and she  
12 resigned December 31, 2016.

13 THE COURT: So we're actually talking if it's 2012 to  
14 2016, that's four years of, umm, and what's the relevance of  
15 asking for to the present?

16 MS. HARDY: Well, it wouldn't be to the present  
17 'cause she left in '16, so.

18 THE COURT: Okay, I'm just trying to figure out  
19 whether that was your intention.

20 MS. HARDY: And again I do think that the  
21 constructive discharge claim puts, you know, that is a much  
22 broader claim and than just the issues of sexual harassment  
23 between her and Mr. Maddox. That concerns the work environment  
24 as a general matter because she did testify, your Honor, that  
25 she -- she never even talked to Mr. Maddox after the resolution

1 of her complaint. She had no further issues with him. The  
2 only thing she said he did was walk by and she thought, you  
3 know, he was lording over her by walking by her workstation,  
4 but that was the extent of her contact. After the resolution  
5 of her complaint, her issue is that there was gossip going on  
6 in the workplace about who the father was of her baby and  
7 whether it was Mr. Maddox because she, she was pregnant without  
8 being married and there'd been this relationship she'd had with  
9 Maddox which was unusual and people were speculating as to who  
10 the father was.

11 THE COURT: Well and I understand that she's said  
12 also and just to say that because of the alleged insufficient  
13 punitive measures that it gave and the sonneting (phonetic) of  
14 her gave the impression that the allegations of sexual  
15 harassment that she had made were not true and that the things  
16 that Mr. Maddox had said were true so I do understand that and  
17 again I'm not trying to decide the merit of it. So I, umm, do  
18 you, Ms. Hardy, do you have something that could when you say  
19 regarding plaintiff's mental or emotional state, I think that  
20 that is just way too broad. I mean, I don't know what that, I  
21 don't know how to narrow that down.

22 MS. HARDY: Well, we, I mean, what it's referring to  
23 is comments that she's made about, you know, panic attacks,  
24 depression, sleeplessness that either relate to --

25 THE COURT: Okay, so if she has a thing about panic

1 attacks, depression --

2 MS. HARDY: Well --

3 THE COURT: -- sleeplessness.

4 MS. HARDY: I mean, we don't know, she says she has  
5 for instance panic attacks and that that's her primary symptom,  
6 but we don't know whether those are related to the stresses of  
7 raising a child as a single mother with a father who's not in  
8 the picture --

9 THE COURT: Well, that doesn't have anything to do  
10 whether or not it's on Facebook. I mean, I just think that  
11 relating to her mental or emotional state is just much too  
12 broad.

13 MS. HARDY: But we can come up with search terms. We  
14 are, I mean, if that would help narrow the scope in a way that  
15 would, umm, satisfy the Court's concern about it not being too  
16 broad, we're happy to try to work that out with Mr. Hanna.

17 THE COURT: That's fine, but I will say that to the  
18 extent that they're just generic like excited, happy, you know,  
19 disappointed, I think that that can just be a slippery slope  
20 and that people can be happy because they, you know, got their  
21 favorite ice cream or disappointed because they went to the  
22 store and it was closed before they got there, so I think that  
23 in terms of the mental or emotional state, unless it's  
24 something very specific about panic attacks, depression,  
25 sleeplessness, things that you're saying --

1 MS. HARDY: Um-hmm. We'll keep it in that range.

2 THE COURT: -- I think that otherwise what someone  
3 posts on social media isn't probative of whether they were,  
4 umm, they are having a, umm, they have an emotional distress  
5 claim.

6 MS. HARDY: Well, what I would suggest if the Court  
7 wants to incorporate terms into the order would be depression,  
8 sleeplessness, panic attacks, anxiety, any reference to  
9 medication for those conditions, umm, crying, that that's been  
10 a symptom she's identify where she'd have bouts of --

11 THE COURT: Well, we don't mean this means crying  
12 emojis, those laughing, crying emojis or anything like that.

13 MS. HARDY: Well, no, I'm not referring to an emoji.  
14 I don't know if -- I don't think it covers emojis. No. You  
15 know, bouts of crying.

16 THE COURT: Mr. Hanna?

17 MR. HANNA: I mean, she testified in her deposition  
18 that she's -- I never was one to divulge my personal life or  
19 anything about myself on social media. First of all as far as  
20 telling co-workers anything about my personal business, that's  
21 not something I have, I've made a habit of doing. I don't  
22 volunteer a lot of information about my personal life.

23 This is a complete fishing expedition, Judge. They  
24 have no evidence that any of this stuff would be relevant.

25 Umm --

1 THE COURT: Okay. Well --

2 MS. HARDY: And it would come back with nothing.

3 THE COURT: -- as I said, I do find that evidence in  
4 social media can be relevant as long as it's narrowly tailored  
5 and I understand you're saying it would be a lot, but there's  
6 no evidence to how, you know, in fact I don't even know what  
7 social media she uses.

8 MS. HARDY: We know she uses Facebook, LinkedIn,  
9 Twitter and Instagram. I don't know about My Space and YouTube  
10 because I haven't asked yet.

11 THE COURT: And YouTube, are you talking about like  
12 videos of herself?

13 MR. HANNA: If I may, Judge, we would -- I think we  
14 would be okay with those search terms if they are from that  
15 limited time period and, you know, between her and the  
16 custodians that defendant has already requested for.

17 THE COURT: Between her and the custodians? What are  
18 you talking about?

19 MR. HANNA: Well, I mean, you have to identify who  
20 the custodians are that you want us to search for responsive  
21 documents.

22 THE COURT: I thought that she would be the  
23 custodian. She would be searching her own.

24 MR. HANNA: Well, between her and who?

25 THE COURT: I'm talking about posts.

1 MS. HARDY: Yeah.

2 MR. HANNA: So like if she ever post -- like so if  
3 she went to a random page where it has a baby in a third-world  
4 country dying and she's like wow, that makes me really  
5 depressed, that's what you'd want? I mean, that's going to  
6 require a search of her entire social media platform as opposed  
7 if you limit it between her and Jane Doe, then we could go to  
8 her messages.

9 THE COURT: Well, that's not what posts are though.  
10 Posts are just to all your friends.

11 MR. HANNA: Okay. Yeah, we would be willing to those  
12 search terms for her page.

13 THE COURT: So panic attacks, depression,  
14 sleeplessness, anxiety, medication and crying?

15 MR. HANNA: Yep, for her page and for, from like a  
16 very limited time period, not for eight years.

17 THE COURT: No, I said 2012 to 2016.

18 MR. HANNA: Well, if anything, Judge, it should be  
19 from 2014 -- strike that, from 2015 after the complaint until  
20 her constructive discharge because they're saying that --

21 THE COURT: Well, but she's saying that -- I think  
22 that it does go back to any, you know, affects of the --

23 MS. HARDY: Of the alleged harassment?

24 THE COURT: Right.

25 MR. HANNA: Fair enough, Judge. That's fine. We

1 don't object to it. So for the record, it would be from 2012  
2 until her constructive discharge in 2016, correct?

3 THE COURT: Right. Okay, so --

4 (Pause)

5 THE COURT: Interrogatory number two, Mr. Hanna, I'm  
6 not understanding your objection to providing at least a  
7 preliminary breakdown of your allegations of damages.

8 MR. HANNA: Well, the only thing could you really  
9 break down, Judge, is her economic damages. You can't break  
10 down your --

11 THE COURT: Yeah.

12 MR. HANNA: -- so for the --

13 THE COURT: Well, no. I mean, people break down when  
14 they come to settlement conferences this is how much I'm saying  
15 I get for my emotional distress.

16 MR. HANNA: Oh, right. You can say this much for  
17 economic --

18 THE COURT: But your economic damages, why can't you,  
19 as I said, at least provide some sort of preliminary, the  
20 theory of your damages?

21 MR. HANNA: Oh, I mean, clearly the vast majority of  
22 that is not -- oh, you said economic damages, excuse me. We --

23 THE COURT: No. I said the theory of your damages,  
24 period.

25 MR. HANNA: Would you repeat your question, Judge? I

1 want to make sure I --

2 THE COURT: I don't know why you can't provide at  
3 least a preliminary breakdown of the theory of your damages.

4 MR. HANNA: I believe we have done that.

5 THE COURT: No because there's no economic damages.  
6 There's no description of -- from what I understand Ms. Edwards  
7 has another job?

8 MR. HANNA: Okay, so you're talking about the  
9 economic damages.

10 THE COURT: No, I'm saying the damages. I'm saying  
11 that she's alleged damages and when I -- I mean, a settlement  
12 conference, there will be, you know, this is how much we're  
13 asking for in damages in total and there's the economic  
14 damages. There's emotional distress. There's attorney's fees.  
15 There's, you know, there are different categories and I'm  
16 asking you why you can't provide at least a preliminary  
17 understanding that there's a continuing duty to supplement and  
18 as you learn new information, you could supplement or refine,  
19 but why can't you provide at least a preliminary breakdown of  
20 where you see damages?

21 MR. HANNA: So the economic damages is dependent on  
22 her back wages and the benefits information. Under Rule 33(d),  
23 we've produced her tax records for her subsequent year of  
24 employment so they have her compensation --

25 THE COURT: Yes, but at the same time you'll send it



1 to your economic expert and your economic expert will say, you  
2 know, this is how much she'll lose over her lifetime.  
3 There's -- it's not just a matter of providing the tax  
4 documentation, it's a matter of providing your theory of what,  
5 of how, umm, she will ask for damages, that breakdown.

6 MR. HANNA: I, I believe we have sufficiently  
7 responded with the information we have. We've requested her  
8 benefits information so we can recreate that and give her --  
9 and give them an exact amount as far as economic damages which  
10 is the only thing that could really be quantifiable. The rest  
11 is going to be up to the jury and we haven't received that  
12 information.

13 THE COURT: But you have her, her income from when  
14 she worked at WXYZ. You have her income now. You can address  
15 whether you think that her, umm, you said that this is, you  
16 know, effects her -- this is taking away her dream. To what  
17 extent this has impacted her ability to get the type of work  
18 that she wants to get, some, some breakdown, some explanation  
19 of, of the damages other than Mr. Fieger got these big verdicts  
20 before because when Mr. Fieger went to the jury and he asked  
21 for these verdicts, he had a breakdown.

22 MR. HANNA: Right. No, I understand, Judge. I mean,  
23 I can if you're looking for something that says X amount for  
24 compensatory damages, X amount for back wages.

25 THE COURT: Yes.

1 MR. HANNA: That's fine. I mean, as far as -- that's  
2 fine, Judge. We can do that.

3 MS. HARDY: And how plaintiff would calculate future  
4 wages. We don't know whether she's contending she would have  
5 been like the lead anchor or the general manager of a news  
6 station or what, what her future would have held had she  
7 supposedly not been constructively discharged, so how she's  
8 calculating what future wages would be.

9 MR. HANNA: I don't object to that, Judge. That's  
10 fine.

11 THE COURT: Okay. I believe is that everything  
12 for -- okay. All right, then let's go to --

13 MR. HANNA: Judge, do you have a minute to swear in  
14 my co-counsel? I think we called chambers about that.

15 THE COURT: Oh, did you?

16 MS. MURTHY: If it's not on the agenda, I'll just run  
17 down to the clerk's office. It's not a problem.

18 MR. HANNA: We can --

19 MS. MURTHY: It was -- I thought we were doing it  
20 here because that's what the office had told me, but I'm also  
21 happy to do that.

22 THE CLERK OF THE COURT: They -- I don't know if you  
23 talked to the clerk's office, but they did not tell me that.

24 MS. MURTHY: Okay.

25 THE COURT: The reason why that's -- I don't have any

1 problem with it theoretically, but I don't have the oath.

2 MS. MURTHY: I, I have all the documentation in front  
3 of me, but I, again, I don't want to delay these proceedings so  
4 if it wasn't on the agenda, I think I can just go to the  
5 clerk's office now and do it.

6 THE COURT: You have the oath?

7 MS. MURTHY: Um-hmm. I have it?

8 THE COURT: Yes.

9 (Pause)

10 THE COURT: Okay, no. I just, now that I have this,  
11 raise your right hand and repeat after me. I.

12 MS. MURTHY: I.

13 THE COURT: Angeli Murthy.

14 MS. MURTHY: Angeli Murthy.

15 THE COURT: Do solemnly swear.

16 MS. MURTHY: Do solemnly swear.

17 THE COURT: Or affirm.

18 MS. MURTHY: Or affirm.

19 THE COURT: That I will conduct myself.

20 MS. MURTHY: That I will conduct myself.

21 THE COURT: As an attorney and counselor.

22 MS. MURTHY: As an attorney and counselor.

23 THE COURT: Of this Court.

24 MS. MURTHY: Of this Court.

25 THE COURT: With integrity and respect.

1 MS. MURTHY: With integrity and respect.

2 THE COURT: For the law.

3 MS. MURTHY: For the law.

4 THE COURT: That I will have read.

5 MS. MURTHY: That I will have read.

6 THE COURT: And abide by.

7 MS. MURTHY: And abide by.

8 THE COURT: The civility principles.

9 MS. MURTHY: The civility principles.

10 THE COURT: Approved by this Court.

11 MS. MURTHY: Approved by this Court.

12 THE COURT: And that I will support and defend.

13 MS. MURTHY: And that I will support and defend.

14 THE COURT: The Constitution and laws.

15 MS. MURTHY: The Constitution and laws.

16 THE COURT: Of the United States.

17 MS. MURTHY: Of the United States.

18 THE COURT: I declare under penalty of perjury.

19 MS. MURTHY: I declare under penalty of perjury.

20 THE COURT: That the foregoing is true and correct.

21 MS. MURTHY: That the foregoing is true and correct.

22 THE COURT: All right. I will sign this. Today is  
23 the 13th. Okay. All right, so does that mean that Ms., is it  
24 Murthy?

25 MS. MURTHY: Yes.

1 THE COURT: Is Ms. Murthy arguing?

2 MS. MURTHY: I am not arguing today and would like to  
3 enter my appearance.

4 THE COURT: Okay.

5 MS. MURTHY: Thank you, your Honor.

6 THE COURT: All right. So Mr. Hanna, we're going to  
7 start with the sexual harassment investigations involving  
8 Mr. Maddox and Mr. Murri.

9 MR. HANNA: I believe the first item was the general  
10 objections part.

11 THE COURT: I know. You want me to strike the -- I  
12 told you the boiler plate objections are, I already said that I  
13 don't know what would be --

14 MR. HANNA: Well, the big issue, Judge, is not  
15 documents that they're now claiming is attorney/client  
16 privilege was never in the privilege log and some of them could  
17 have --

18 THE COURT: That's a specific objection. I was going  
19 by the, umm, I think that the request to strike boiler plate  
20 objections is not something that is going to make a difference  
21 so I was going to in the order of your motion and the first  
22 thing was discovery concerning all sexual harassment  
23 investigations that involve Mr. Maddox and Mr. Murri. This is  
24 one I'm confused about is the relevance of other sexual  
25 harassment investigations and comparators, how does that fit in

1 this case?

2 MR. HANNA: Well, the case law says it's discoverable  
3 first of all and --

4 THE COURT: For what type of case and that's why I  
5 tried to focus on the claim and defense here. Your claim is  
6 that she was sexually harassed and that she complained, there  
7 was insufficient consequences to Mr. Maddox, she -- and she was  
8 retaliated against, not that she was treated differently than  
9 similarly-situated men and so how do you get to comparators in  
10 this type of sexual harassment claim?

11 MR. HANNA: So because he was a star anchor,  
12 defendant did not take effective remedial measures so as far as  
13 third-party investigations to see to be able to compare the  
14 sexual harassment that was alleged there and what, umm, what  
15 measures the company took in comparison with what happened here  
16 and what they did with Mr. Maddox as far as, so that's  
17 third-party investigations not involving Mr. -- or actually  
18 we're only talking about the ones involving Mr. Maddox. So as  
19 far as the ones involve --

20 THE COURT: No, you actually said anything that  
21 Mr. Murri has investigated, everything at Scripps.

22 MR. HANNA: Right, so as far as the ones that  
23 Mr. Murri investigated, that's why they would be relevant, you  
24 know, to be able to compare how Mr. Murri handled  
25 similarly-situated sexual harassment investigations not

1 involving a star anchor in comparison to what happened with the  
2 star anchor will help demonstrate the fact that they did not  
3 take effective remedial measures, they did not abide their  
4 progressive disciplinary policy. As far as prior complaints  
5 alleged against Mr. Maddox, I think the fact that he has a  
6 history of sexually harassing women and the company was aware  
7 of that is highly relevant and clearly discoverable.

8 THE COURT: Those are two different things.

9 MR. HANNA: Okay.

10 THE COURT: Let me ask you, Ms. Hardy, to first  
11 address whether there are other and Mr. Hanna has represented  
12 that Mr. Maddox was accused of sexual harassment before Ms.  
13 Edwards made that complaint.

14 (Pause)

15 MS. HARDY: The answer's no, to our knowledge. There  
16 was not a complaint that in, that was -- but, that went to HR.  
17 I mean, people can grumble between each other. I'm not  
18 including that kind of situation, but no formal internal  
19 complaint.

20 THE COURT: Well, let me rephrase it. Was there an  
21 investigation of sexual harass -- any other investigation of  
22 sexual harassment allegations involving Mr. Maddox other than  
23 Ms. Edwards'?

24 MS. HARDY: No. No. Not -- no, at the time she  
25 complained, she was the first complaint and there were other

1 women in the course of that investigation who said I heard him  
2 say this or that, but it did not develop into a separate  
3 investigation because none of them asserted a complaint.

4 THE COURT: Did you -- have you disclosed the  
5 statements by other people about Mr. Maddox and allegations  
6 that he was engaged in sexual harassment or said things that  
7 were, umm, that create --

8 MS. HARDY: We have disclosed the full investigatory  
9 file related to the plaintiff's 2015 complaint. The only issue  
10 in contention that I'm aware of is that in 2017 in December,  
11 Reverend Rideout had a press conference that was heavily  
12 covered on Fox News in which he tried to drum up again issues  
13 about Malcolm Maddox even though the last complaint about him  
14 had been the plaintiff in 2015. So nearly two years later,  
15 Reverend Rideout has this press conference that generates press  
16 coverage and at that point in time one of the lawyers with  
17 Scripps sent out a message to people saying if anyone has had  
18 an issue with Malcolm Maddox since Tara Edwards' complaint,  
19 please, please come forward and that's so she looked into it.  
20 It had nothing to do with Tara Edwards because she was gone  
21 from the station as of December, 2016. It was trying to find  
22 out if there's anybody else who had a complaint.

23 THE COURT: Were there statements, witness statements  
24 given at that time?

25 MS. HARDY: No.



1           THE COURT: So no one provide any -- when the, umm,  
2           when the notices went out that these attorneys will be here and  
3           if anyone wants to talk, we're available to talk?

4           MS. HARDY: There were three people who came forward  
5           and talked to the lawyer as part of her investigation and she  
6           took notes and that's to my understanding the only thing that  
7           would be considered a, a file. She was --

8           THE COURT: Have you disclosed the notes that she  
9           took regarding the statements made by those three individuals?

10          MS. HARDY: No we have not because we've asserted the  
11          privilege because it was part of the legal department  
12          investigation to find out if there was any ongoing problem with  
13          Mr. Maddox that could create potential legal liability. She  
14          was doing it on behalf of the legal department.

15          THE COURT: So I understand that the advice that she  
16          gave would be covered by the attorney/client privilege. Why  
17          wouldn't the statement, any factual statements that are made,  
18          why wouldn't those be discoverable?

19          MS. HARDY: Well, they weren't witness statements,  
20          they were notes of a lawyer and her impressions created as a  
21          result of interviewing three people.

22          THE COURT: I'm not talk -- I don't mean her  
23          impressions, I'm talking about the substance of what they said.

24          MS. HARDY: I don't think you can separate when a  
25          lawyer's taking notes, separate the facts from her impressions

1 because she's drawing conclusions as she's listening to these  
2 people to determine whether or not she's hearing anything that  
3 would suggest that there has been conduct that would create  
4 legal liability and I --

5 THE COURT: Now I think that you can separate those.  
6 I think that you can separate what the third party said to the  
7 lawyer and the impressions that made on the lawyer.

8 MS. HARDY: I think that's covered by the Upjohn  
9 case, the U.S. Supreme Court case that when there is an  
10 investigation conducted by the lawyers to determine potential  
11 legal liability, when you're interviewing witnesses for the  
12 purpose of obtaining information to give legal advice, that  
13 that is privileged. I don't disagree that --

14 THE COURT: Here's the problem I'm having is that the  
15 communication between the lawyer and Scripps, obviously that's  
16 attorney/client privilege, but what the third party said,  
17 you're saying that what the third party said is covered by the  
18 attorney/client privilege?

19 MS. HARDY: Well, if there was a witness statement,  
20 then I don't think that would be, but there isn't a witness  
21 statement. All there are are attorney notes.

22 THE COURT: But it's a witness statement. It's a  
23 statement by a witness in a form that you're saying is covered  
24 by the attorney/client privilege, but it's a witness statement.  
25 That's what I'm trying to -- I'm trying to get to whether the

1 attorney in this investigation took statements and then put it  
2 into her letter in a way that makes it such that the plaintiff  
3 can't see the statements that were made by the third parties.

4 MS. HARDY: I don't believe it would be a fair  
5 characterization to say she took a statement. I think she took  
6 notes in which she incorporated, umm, to some extent what she  
7 may have learned from the witness and her impressions about how  
8 she viewed that from the lawyer perspective.

9 THE COURT: Did she identify who she spoke to?

10 MS. HARDY: Yes, three people.

11 THE COURT: But you're saying that even in an  
12 interrogatory, you wouldn't say who, what those witnesses said  
13 to her?

14 MS. HARDY: Well, first thing, they weren't  
15 complaints, they were just people who came forward to share  
16 information as part of an investigation.

17 THE COURT: I understand that, but they're statements  
18 made by witnesses.

19 MS. HARDY: Well, I don't, without -- I don't know  
20 how to extract from her notes without compromising the  
21 privilege what the witnesses had to say. Now of course they  
22 could be deposed by Mr. Hanna if he's interested and to ask  
23 them what they had to say. That wouldn't be privileged, but to  
24 go directly to the lawyer's notes I think would tread upon  
25 privilege in a way that would not be proper legally and in

1 addition to the privilege issue, we also have a relevance issue  
2 which is that, you know, the whole issue here is was remedial  
3 action taken with respect to plaintiff. She has unequivocally  
4 testified she had no further problems with Mr. Maddox. The  
5 problems she had after the remedial action was taken was with  
6 her co-workers who she thought were gossiping.

7 THE COURT: So to the extent that any of those  
8 witnesses had information about that, why wouldn't that be  
9 relevant?

10 MS. HARDY: But she's got that. She's got everything  
11 that -- she has every -- she has the whole file from '15 from  
12 people that they talked to.

13 THE COURT: No, I'm talking about if someone said in  
14 2017 provided information that buttresses her statements about  
15 what happened to her, so what's the case that you're referring  
16 to, the Supreme Court case?

17 MS. HARDY: Upjohn.

18 THE COURT: Am I seeing it in the response? I don't  
19 see it in the response.

20 MS. HARDY: Umm, I don't know if it's in the  
21 response, but because I don't think we had to reach that issue,  
22 but we didn't go into --

23 THE COURT: I mean, I think that Mr. Hanna definitely  
24 went into what happens if an attorney is the one conducting the  
25 investigations.

1 MS. HARDY: We'll get your Honor a cite, but if I  
2 could go back to the relevance issue? She made a complaint in  
3 '15. Remedial action was taken in '15. The problem with  
4 Mr. Maddox was over with, so what some other person claims may  
5 have happened to them at some other point in time --

6 THE COURT: That's not what I said.

7 MS. HARDY: -- is not relevant to the plaintiff.

8 THE COURT: That's not what I said. What I said was  
9 that if in the investigation someone might have shared  
10 information that would be relevant to what occurred before Ms.  
11 Edwards resigned.

12 MS. HARDY: They did not share information that  
13 related to Tara Edwards and Malcolm Maddox. That, I can  
14 affirmatively answer. That was not -- it was about issues they  
15 had with Mr. Maddox which would have no bearing on her  
16 complaint about her issues with Mr. Maddox.

17 THE COURT: Okay. I have the Upjohn case. Give me a  
18 minute, please.

19 (Pause)

20 THE COURT: Okay, so I think that the Upjohn case is  
21 talking about what happens when the client is giving  
22 information to the attorney, that the client that the  
23 information gives to the attorney is covered by the privilege.  
24 Is that accurate?

25 MS. HARDY: Yes.

1           THE COURT: All right. Mr. Hanna, I already told you  
2           that I found your, umm, your footnotes to be overwhelming. Is  
3           there a particular opinion that you want to direct me to that  
4           talks about the specific issue of whether statements made  
5           during an investigation that are reflected in an attorney's  
6           notes are discoverable?

7           MR. HANNA: Sure. I mean, before we get into the  
8           waiver argument, Judge, can --

9           THE COURT: Can you actually just address the  
10          question before you go to what you want to tell me?

11          MR. HANNA: Sure.

12          (Pause)

13          MR. HANNA: For example, in Upjohn, Upjohn stands for  
14          the proposition that plaintiff is entitled to the underlying  
15          facts of the investigation if you go to page 395 and 396. We  
16          actually cited Upjohn. Aside from Upjohn, I can give you other  
17          cases if you'd like.

18          THE COURT: Well, you're saying in Upjohn they said  
19          that the attorney/client privilege applied to statements made  
20          by corporate superiors it looks like, but I, obviously I  
21          haven't had a chance to really digest this opinion. I'm just  
22          looking at it on the Bench now.

23          MR. HANNA: Yeah and if you go to page, umm, this is  
24          not a corporate superior, Judge. This is, they are employees  
25          that defendants --

1 THE COURT: What page are you talking about?

2 MR. HANNA: Yeah, defendants do not represent these  
3 individuals, Judge.

4 THE COURT: What page did you say?

5 MR. HANNA: Yeah, 395 to 396, Judge.

6 (Pause)

7 THE COURT: See, what I'm reading here is it says  
8 that the government could subpoena the witnesses, but that, so  
9 tell me what language you're saying?

10 MR. HANNA: I don't have the, I don't have the case  
11 in front of me, Judge, but I could give you other --

12 THE COURT: It says our decision, our decision of the  
13 communications by Upjohn employees to counsel are covered by  
14 the attorney/client privilege disposes of the case so far as  
15 the response of the questionnaire.

16 MR. HANNA: There's numerous cases that I've cited  
17 Judge that clarify that.

18 THE COURT: And I'm asking you that, yes, you did  
19 cite numerous and not all of them are precisely on point and  
20 some of them are in crowded footnotes and that's why I was  
21 asking you for a specific opinion that would address this  
22 particular issue.

23 MR. HANNA: So, okay. You're scaring me here because  
24 I feel like if I don't give you one -- okay. In Reinhard,  
25 Dow Chemical Company v. Reinhard which is an Eastern District

1 of Michigan case.

2 THE COURT: What's the citation?

3 MR. HANNA: 2008 West Law, 2245007.

4 THE COURT: 2004 West Law, 224?

5 MR. HANNA: 5007. It says the protection extends  
6 only to communication with the attorneys, but not the facts;  
7 that is, the communication of facts to an attorney does not  
8 shield those facts from disclosure.

9 THE COURT: But see, that's what they're saying.  
10 What they're saying is that you can, you can depose those  
11 witnesses and require them to testify about what they said, but  
12 you don't get to see their documents and that's actually what  
13 Upjohn says. That didn't show anything. I don't know what  
14 happened to that.

15 MR. HANNA: So I mean, we're not required to take  
16 what they're saying at face value, Judge, as far as what those  
17 communications had and whether they were or were not. You  
18 know, first, defendant said --

19 THE COURT: No. They're saying you don't have to do  
20 that, that you can actually subpoena the witnesses or notice  
21 the witnesses to testify and ask them about what they reported.

22 MR. HANNA: But these documents are highly relevant,  
23 they're discoverable. The privilege does not apply, they're  
24 not their clients and, you know, we would object to that,  
25 Judge. Let me pull up another case that hopefully can make it



1 clearer. This investigation that they've conducted is the type  
2 of routine investigation that's done every day by HR personnel.  
3 You cannot circumvent the discovery of this information by  
4 having an attorney --

5 THE COURT: I understand your argument, but the  
6 Upjohn case does say what they said which is that the, you  
7 know, that the, umm, even though I'm saying this with reading  
8 limited portions of the opinion, but it does appear to say that  
9 communications to the attorney of the corporate employees was  
10 privileged, but that the witnesses could be subpoenaed to  
11 testify, but that the in --

12 MR. HANNA: I mean, there's the whole line of cases  
13 regarding the sword and shield where they're not permitted to  
14 use this investigation and the fact that they purportedly took  
15 effective remedial measures as a sword while simultaneously  
16 sheathing us from that discovery. I mean, with what you're  
17 saying, Judge, then the motion to compel those text messages  
18 shouldn't be produced. They could just ask those witnesses  
19 what they discussed with them. You know, that could go --

20 THE COURT: That's not the same as the  
21 attorney/client privilege.

22 MR. HANNA: Would value --

23 THE COURT: So in terms of shielding the information,  
24 it's not that they're shield -- the information is shielded  
25 because the witnesses can be called to testify about whatever

1       they told the attorney.

2               MR. HANNA: And they could also be called to testify  
3 about whatever they texted each other on.

4               THE COURT: But the text messages don't enjoy the  
5 attorney/client privilege so that's a different animal.

6               MR. HANNA: And we would argue that there is no  
7 attorney/client privilege that protects these documents.

8               THE COURT: Okay, I just -- I understand that you  
9 feel on the spot, but at the same time this is your argument  
10 and there are, you know, some of the pages are half footnotes.  
11 Page 10 for example is just half footnotes --

12              MR. HANNA: I mean --

13              THE COURT: -- and so I'm just trying to get you to  
14 tell me, umm, I understand I see the narrow confidential  
15 communications and I understand the idea that the business  
16 advice is not covered, but they're saying that they gave legal  
17 advice and that the legal advice could be used to make business  
18 decisions. I understand that if the attorney is not acting in  
19 the role of an attorney, that that's not covered by  
20 attorney/client privilege. I'm asking you very specifically  
21 whether there's any opinion that you can cite to that says that  
22 your remedy isn't to depose the particular witnesses, it's to  
23 get the documents authored by the lawyer.

24              MR. HANNA: That issue was not specifically provided  
25 in their papers so I don't have a specific cite on that

1 argument. That argument was not made. I have --

2 THE COURT: Okay.

3 MR. HANNA: -- you know, and I understand now from  
4 working in front of you in the future I'm not going to cite all  
5 of these cases. Some judges might want that and clearly you  
6 don't prefer that, so point taken, but --

7 THE COURT: No, it's not that I don't want all the  
8 case, but some of the cases aren't that -- their claim isn't  
9 that they gave business advice, their claim is that it's an  
10 attorney/client privilege and as you noted --

11 MR. HANNA: Well, that --

12 THE COURT: -- it really is a, umm --

13 MR. HANNA: That's just it --

14 THE COURT: -- a Court wants to proceed with caution  
15 before ordering the disclosure of documents that include legal  
16 advice from an attorney and so that's why I'm trying to get to  
17 any opinion that gets to that specific issue.

18 MR. HANNA: And point well taken, Judge, and we  
19 respect the attorney/client privilege and because of that we  
20 didn't even, we said alternatively if the Court would prefer,  
21 the documents could be produced in camera and the judge can  
22 decide --

23 THE COURT: But --

24 MR. HANNA: -- because at the end of the day, we  
25 don't have to listen to what they -- they want to classify it

1 as attorney/client privilege. These sure look like  
2 investigations to me, but you can call it -- they can't just  
3 call it an attorney/client privileged communication and it's  
4 not an investigation and not produce these documents. Malcolm  
5 Maddox was terminated weeks after these investigations. They  
6 didn't call counsel an attorney by the way. They said in their  
7 e-mail Scripps then brought an outside independent investigator  
8 who also found no evidence of further misconduct by Maddox  
9 after his 2015 discipline. His 2015 discipline was the  
10 discipline of Tara Edwards, so these investi -- so that, so  
11 basically this case and mind you in ELCRA, you can only go back  
12 to three years, right, so you only go back at the time when  
13 this investigation was done and then what happened afterwards.  
14 So this investigation happened and what happened afterwards is  
15 what's relevant to this case and these investigations are what  
16 investigated, what happened after her complaint to see whether  
17 they took effective remedial measures. It's, these are  
18 investigations and --

19 THE COURT: Okay. Let me put it this way. So I'm  
20 going to deny this request without prejudice and, umm, if --  
21 and I am going to suggest that you, umm, is there something  
22 that you wanted to show me?

23 MR. HANNA: Yeah, I mean, we've had the same issue  
24 before against University of Michigan in a case here and  
25 because we cannot determine whether it is truly attorney/client

1 privileged or not, there, magistrate Whalen ordered that the  
2 documents be produced in camera. We would object --

3 THE COURT: I've done it before and I haven't seen  
4 Magistrate Judge Whalen's opinion that you're referring to, but  
5 there does need to be some sort of preliminary showing.

6 MR. HANNA: I think there is preliminary showing,  
7 Judge. The e-mail they sent out concerning these  
8 investigations and the fact that the harasser, they  
9 investigated him regarding sexual harassment and then they  
10 fired him like a week or two later and they're saying oh, no,  
11 no, no, it wasn't because of that, it was because of this that  
12 we fired him. Well, okay, but this is still discoverable.  
13 These investigations are the most important documents.

14 THE COURT: All right, so as I was saying, you can --  
15 I'm going to deny it without prejudice. You have the ability  
16 to call the witnesses and since the witnesses have been  
17 disclosed.

18 MR. HANNA: They have not been disclosed, Judge.

19 THE COURT: Okay. Ms. Hardy said they were  
20 disclosed. Can you tell us who the witnesses are or where  
21 they've been disclosed?

22 MS. HARDY: I don't believe they have been disclosed  
23 to date, but we will, if they ask for them, we'll disclose them  
24 and we can disclose them right now if the Court would prefer.

25 THE COURT: If you could disclose them right now.

1 MS. HARDY: Umm, two points I'd like to make and  
2 while Mr. Davis is pulling up the names, I just went back to  
3 read the 2017 file from Danyelle Wright who's the attorney and  
4 she's the one who asked people to come forward if they had  
5 anything to say about Mr. Maddox. She had Michelle Zackay who  
6 is the HR director at the station assist her in some of the  
7 interviews and Michelle Zackay created some interview notes  
8 along with Danyelle Wright's interview notes. We assert that  
9 certainly the lawyers' notes are privileged as well as anyone  
10 who's functioning in conjunction with her as part of the  
11 investigation, but I just wanted --

12 THE COURT: You're saying the human resources  
13 investigation, that her notes --

14 MS. HARDY: No, no, no, no. Not the human -- not the  
15 one that related to plaintiff. Danyelle Wright in response to  
16 the Rideout conference decides that she is going to, she wants  
17 to --

18 THE COURT: I understand, but you're saying that the  
19 human resources employee took notes of the interviews with the  
20 employees and that the human resources' employee's notes are  
21 also privileged?

22 MS. HARDY: Yes. If she's acting at the direction of  
23 counsel and is is part of the legal investigation, if she's  
24 assisting with it and her, she has been asked to participate at  
25 the direction of counsel and is being given direction of

1 counsel and is reporting to counsel what she has learned, her  
2 notes would also be privileged under Upjohn and its progeny.

3 THE COURT: I'm having a much harder time with that  
4 one.

5 MS. HARDY: We'd be happy to brief that, your Honor.

6 MR. HANNA: Judge, if that's the case, all of these  
7 investigations of big companies are in some way, shape or form  
8 within the directions of their in-house counsels.

9 MS. HARDY: Well, that's not true and this wasn't  
10 just in some way, shape or form, this was Danyelle Wright who  
11 came from Cincinnati to the station. She is an employment  
12 lawyer with Scripps Howard and she conducted the, I don't even  
13 know if you'd really call it an investigation, but she is the  
14 one who asked people to come forward to hear if there was  
15 anything further about Mr. Maddox since the Tara Edwards  
16 complaint.

17 THE COURT: But the human resources employee who's  
18 taking notes is not including any attorney impressions.

19 MS. HARDY: Well, she is acting at the direction of  
20 counsel as part of counsel's investigation.

21 THE COURT: That doesn't necessarily cloak her in  
22 attorney/client privilege.

23 MS. HARDY: I believe it does under Upjohn.

24 THE COURT: Let me see. Let me read something.

25 (Pause)

1 MS. HARDY: Your Honor, Mr. Davis was just clarifying  
2 that the principle is articulated in cases following Upjohn  
3 relying upon the Upjohn precedent, but not expressly  
4 necessarily addressed in Upjohn itself.

5 THE COURT: I'm sorry, I'm trying to read.

6 (Pause)

7 THE COURT: All right, I am going to need further  
8 briefing on this and I would like the briefs to be no more than  
9 five pages each and please just direct me to the most salient  
10 legal authority.

11 MS. HARDY: Your Honor, there's one other  
12 investigation which is at issue in plaintiff's request and  
13 that's the 2018 investigation. Now that's totally different,  
14 again, from '15 and from '17 and that was there was a draft  
15 complaint that had been forwarded to my client and my law firm  
16 was retained to provide legal advice to my client about legal  
17 risks and Ms. Sonja Lengnick conducted an investigation for --

18 THE COURT: Who is that?

19 MS. HARDY: Sonja Lengnick of our firm.

20 THE COURT: An attorney from your firm?

21 MS. HARDY: Yes. She conducted an investigation to  
22 determine what advice to provide to our client with this  
23 pending lawsuit and that's another investigation that they're  
24 seeking. That was strictly to provide legal advice to our  
25 client as to what --



1 THE COURT: And so there were no more interviews with  
2 any employees of --

3 MS. HARDY: No, there were interviews. There  
4 definitely were interviews. Ms. Lengnick went back and asked  
5 questions to determine whether, not to go back to Tara Edwards,  
6 but to determine whether any further problem had occurred with  
7 respect to Mr. Maddox that we should be aware of and that the  
8 client should take into consideration when it was determining  
9 how to assess the lawsuit and how to assess its workplace.

10 THE COURT: So how is that different? How is that a  
11 different investigation?

12 MS. HARDY: Because there's a pending legal matter or  
13 about to be a pending legal matter and outside lawyers are  
14 hired to, to gather information and make legal assessments and  
15 advise our client. I think that's like the most classic  
16 example of a privileged investigation because it is --

17 THE COURT: I guess let me ask you this. Were you  
18 talking -- was she talking with like the HR personnel or people  
19 or was she again interviewing employees who had their own  
20 experiences?

21 MS. HARDY: Both.

22 THE COURT: Okay. I think that then that that just  
23 needs to be covered by the same --

24 MS. HARDY: Brief?

25 THE COURT: -- brief because and I understand what

1     you're saying is that work product in pending -- so I  
2     understand the distinction, but to the extent that she is  
3     interviewing witnesses, the question is whether, not whether  
4     her impressions are relevant or are discoverable because of  
5     course her impressions and her advice is not discoverable, but  
6     to the extent that there were statements made, I do think  
7     number one, anyone who has, umm, Mr. Hanna has not asked for  
8     the identity of witnesses who are interviewed?

9             MR. HANNA: Of course we have.

10            MS. HARDY: I don't believe he has.

11            MR. HANNA: Judge, that's covered in numerous  
12     requests and interrogatories and I, we would have this part  
13     briefed because then this is part of the, the big issue that  
14     we're having here is that counsel for defendant is a witness, a  
15     material witness in this case. This information is not  
16     protected and there's numerous case law that talks about  
17     communication if it's mixed with legal advice and business  
18     management decision is not covered.

19            THE COURT: I understand that --

20            MR. HANNA: They --

21            THE COURT: -- but I think what they're, what they  
22     said and I think that it -- if you're saying that any time a  
23     corporation hires a lawyer to provide legal advice that leads  
24     to someone being fired, had this that attorney becomes a  
25     witness, I just think that that just is not, that just doesn't

1 measure with my understanding of the law at all.

2 MR. HANNA: We'd be happy to brief that, Judge, and  
3 for example we have another case against their law firm where  
4 an investigation happened regarding discrimination. They hired  
5 one law firm that investigated and then that company, that  
6 defendant hired counsel for defendants' law firm to represent  
7 them in that matter and that's classically how it's done where  
8 you hire --

9 THE COURT: And you're saying that the lawyer that  
10 gave the legal advice that led to the termination is now the  
11 witness?

12 MR. HANNA: It depends what -- see, it's tricky,  
13 that's why the Court would likely have to review because if  
14 this is legal advice, if the advice is fire Maddox, that's  
15 business decision. You cannot circumvent an investigation that  
16 led to the termination of a harasser --

17 THE COURT: Okay. All right, I'm not going get into  
18 that right now. I do think that that's not compatible with my  
19 understanding of the whole idea of seeking legal advice. Even  
20 if that legal advice as defense said leads to a business  
21 decision, that doesn't mean that the legal advice now is not  
22 covered by attorney/client privilege.

23 MR. HANNA: Judge, if I could point you to some cases  
24 in the brief regarding that issue?

25 THE COURT: Okay.

1 MR. HANNA: Give me one second, please?

2 (Pause)

3 MR. HANNA: For example, Mesa -- Musa-Muaremi and the  
4 quote is "The privilege does not, however, protect business  
5 decision advice even when that business advice is rendered by  
6 an attorney or an attorney is the one, is one of the  
7 participants in the business decision." There's also --  
8 there's several other cases in that regard and there's also  
9 cases that talk about this very instance where some kind of  
10 legal action was initiated and then the attorney conducted an  
11 investigation that led to a business decision and even there --

12 THE COURT: Give me a citation. That's what I asked  
13 you.

14 MR. HANNA: Certainly. For that one, it would be  
15 Harding, 914 F Supp. At 1090. There, they permit the  
16 deposition of outside counsel in a sexual harassment  
17 investigation conducted by the same after complaint was filed  
18 with New Jersey division of civil rights where the employer  
19 alleged the purpose of the investigation was to determine the  
20 factual basis of plaintiff's complaint.

21 (Pause)

22 THE COURT: Okay. That's actually not what this case  
23 is saying as I read it. It says that the -- it said that the  
24 attorney's investigation clearly falls within the purview of  
25 attorney activity and finds that the investigator was acting as

1 an attorney for the purposes the attorney/client privilege.

2 MR. HANNA: For Harding?

3 THE COURT: Oh, it says that there's an order for a  
4 deposition -- yeah, this is going to have to be included in the  
5 supplemental briefing.

6 MR. HANNA: Would the Court mind if I point your  
7 attention to one more case that might --

8 THE COURT: No because, you know, me trying do this  
9 on the Bench and make a -- I think that this is definitely a  
10 very complicated issue that even though it was addressed and  
11 there are a lot of opinions cited, it really, the briefs I  
12 don't think did enough to really hone in on what we're talking  
13 about here, number one, that whether you're saying that the  
14 attorney's impressions from the first, the 2017 investigation  
15 are relevant and then there's the issue of the human resources  
16 and whether the human resources investigation is covered by  
17 attorney/client privilege and now we have you saying that the  
18 attorney who was -- that these attorneys are witnesses and that  
19 they were not providing legal advice, they were only simply  
20 providing business advice and it's not covered by the  
21 privilege. The opinion that you just drew me to, it does look  
22 like the attorney was --

23 MR. HANNA: Deposed.

24 THE COURT: -- had to be deposed, but that the Court  
25 clearly said that his, his work, he was acting as an attorney

1 when he was conducting the investigation so --

2 MR. HANNA: We recognize that it's a complicated  
3 which is part of the reason we had so many cases and part of  
4 the reason, I'm just saying I think the Court should just  
5 review the documents. I understand that I don't know if the  
6 Court will ever feel comfortable enough to just say go ahead,  
7 take it, I get that and that's why we said --

8 THE COURT: Whether or not I review the documents  
9 really has no -- it's not relevant whether I review the  
10 documents if they are protected by attorney/client privilege,  
11 then they can't be disclosed, so --

12 MR. HANNA: But they're saying they're protected by  
13 the attorney/client privilege. They're, you know --

14 MS. HARDY: Your Honor --

15 MR. HANNA: -- they're not. That's the whole thing,  
16 they can call that.

17 THE COURT: Okay, I'm not going to -- go ahead,  
18 Ms. -- I'm going to --

19 MS. HARDY: There's no basis for him asserting that  
20 we were providing business advice. We're lawyers, we're  
21 employment lawyers. We were hired to provide legal advice on  
22 employment questions.

23 THE COURT: I, I I, certainly understand your and the  
24 opinion, I didn't read this opinion --

25 MR. HANNA: Judge, if I may address that point?

1 MS. HARDY: And then that the other issue that Mr. --

2 THE COURT: No because I'm going to have further  
3 briefing and I don't want to hear anymore argument on it.

4 MS. HARDY: The other issue that he's confusing and  
5 we'll address this in the brief, but there is a concept of, you  
6 know, and in sexual harassment cases, employers under, and  
7 particularly under Title Seven --

8 THE COURT: Is that something that won't be included  
9 in the supplemental brief that you have because it's almost,  
10 it's after four now and so --

11 MS. HARDY: I can say this very quickly. We are not  
12 using this 2017 or '18 investigation as an affirmative defense  
13 or as a way to explain in the context of this legal action that  
14 we conducted an investigation --

15 THE COURT: I really -- okay, like I said --

16 MS. HARDY: -- and that's the shield and sword  
17 argument that he's referring to and we're not --

18 THE COURT: All right. I'd like for that to be  
19 addressed --

20 MS. HARDY: -- using it as a shield.

21 THE COURT: -- in supplemental briefing and for us to  
22 go, to address Mr. Hanna, I am not seeing the relevance of any  
23 comparators, any other investigations covered by Mr. Murri. I  
24 don't see how -- I'm not seeing the relevance of that at all.

25 MR. HANNA: I mean, that's a lot more relevant than

1     what they were requesting. The fact that Mr. Maddox was, may  
2     have investigations concerning sexual harassment is not  
3     relevant to my client's sexual harassment claim?

4             THE COURT: That's -- you -- what I said was  
5     Mr. Murri.

6             MR. HANNA: The fact that --

7             THE COURT: You want every, you want files on every  
8     quote unquote "comparator". You want a delineation of every  
9     sexual harassment investigation that Mr. Murri has been  
10    involved in --

11            MR. HANNA: Others.

12            THE COURT: -- in the full Scripps, you know, in the  
13    full corporation and again, since there's no allegation of  
14    similarly-situated employees been treated differently, I don't  
15    see the relevance of all of that and certainly not that it's  
16    proportional. I don't see how that's going to make --

17            MR. HANNA: There is --

18            THE COURT: -- any more likely that Mr. Maddox  
19    sexually harassed Ms. Edwards and that the treatment that he  
20    received was not adequate to remove the hostile environment  
21    that she was suffering such that she was constructively  
22    discharged.

23            MR. HANNA: I -- we object, your Honor. I -- we'll  
24    object to it.

25            THE COURT: Okay. You have, I mean, I've told you,



1 but you haven't explained how that's relevant so I'm giving you  
2 the opportunity.

3 MR. HANNA: Sure. All the cases say this stuff comes  
4 in. They haven't provided one authority that says this type of  
5 stuff doesn't come in. It's highly relevant. It's  
6 discoverable. It's discoverable for several reasons. The  
7 fact --

8 THE COURT: Okay. So I looked up your authority and  
9 I will give you an example of something that you've cited. It  
10 says discrimination cases, this is the Bobo case, frequently  
11 turn on whether the plaintiff can identify one or more  
12 comparaties who are similarly situated in all relevant  
13 respects, the type of cases that allow comparator information  
14 address where there are allegations that similarly-situated  
15 people are treated differently. I asked you at the beginning  
16 of this hearing whether that was your claim and you said no.

17 MR. HANNA: You're talking about comparators to the  
18 client, not to the harasser, so similarly-situated harrassers  
19 who are not star anchors who did a lot less sexual harassment,  
20 but weren't fired is highly relevant and that comes --

21 THE COURT: Star harrassers aren't a, you know,  
22 they're not a suspect classification so -- all right, I'm  
23 not --

24 MR. HANNA: You can conduct comparator evidence.  
25 Comparator doesn't have to be about the plaintiff. It could be

1 about -- the defendant. It could be about the harasser.

2 THE COURT: I haven't seen that and that's not what  
3 the opinions that you cited were addressing. They weren't  
4 saying compared to other employers or other harrassers, it was  
5 the similarly-situated comparator analysis has to do with a  
6 claim that someone was discriminated in that they were treated  
7 differently than someone who is outside of their classification  
8 and that's not this case.

9 MR. HANNA: Similarly-situated plaintiffs who weren't  
10 discriminated against by star employees were treated  
11 differently.

12 THE COURT: That's not the suspect classification  
13 though.

14 MR. HANNA: I understand, Judge.

15 MS. HARDY: Your Honor, there's a fundamental  
16 difference between disparate treatment and hostile work  
17 environment. The comparator analysis has nothing to do with  
18 hostile work environment.

19 THE COURT: That's what I, I said, so, umm --

20 MR. HANNA: Comparator evidence has been introduced  
21 in numerous hostile work environment cases across the country.

22 THE COURT: Okay. So are you able to point to  
23 because I, I quoted the Bobo case. The Bobo case is talking  
24 about similarly-situated employees. Can you point to a sexual  
25 harassment case where the allegation is not made that someone

1 was treated differently than similarly-situated employees  
2 outside of their suspect classification in which comparator  
3 evidence was, was allowed?

4 MR. HANNA: Sure, one moment, Judge.

5 (Pause)

6 MR. HANNA: If you look at Braud v. Geo Heat  
7 Exchangers, there it states defendant's actions taken in  
8 response to plaintiff's allegations and those of other  
9 employees is relevant to the claims before the Court.

10 THE COURT: I'm sorry, say that again?

11 MR. HANNA: Defendant's actions taken in response to  
12 plaintiff's allegations and those of other employees is  
13 relevant to claims before the Court.

14 THE COURT: That's saying comparator?

15 MR. HANNA: But it talks about defendant's action  
16 taken in response to other employees is relevant to the claims  
17 before the Court and that's exactly what we're saying. The  
18 actions they took in response to other employees is relevant to  
19 the claims of the Court, before the Court.

20 THE COURT: Okay, this one doesn't -- just, okay.  
21 Can you give me the citation for that?

22 MR. HANNA: 314 F.R.D., 386 and what I just cited for  
23 you, Judge, is on page 390.

24 MS. HARDY: Mr. Hanna's talking about adverse job or  
25 I'm sorry, not adverse job action, he's talking about remedial

1 action, did Scripps take appropriate remedial action as that's  
2 defined in light of a sexual harassment complaint. That is not  
3 measured by what they do with respect to others. It's all  
4 measured by whether or not their actions are reasonably  
5 designed to end the harassment, to remedy the problem.

6 THE COURT: Okay. I'm trying to --

7 MR. HANNA: Not true --

8 THE COURT: What I -- so where, what page are you  
9 saying?

10 MR. HANNA: 390, Judge.

11 THE COURT: 390.

12 (Pause)

13 THE COURT: This says that the harasser's personnel  
14 file is relevant.

15 MR. HANNA: Right, well, that is part of our request  
16 is the har --

17 THE COURT: That's not what I was referring to. I  
18 was referring to you getting personnel files and other  
19 discovery regarding quote unquote "comparators" --

20 MR. HANNA: Right, I think --

21 THE COURT: -- and this doesn't relate to  
22 comparators --

23 MR. HANNA: Are you talking about where the --

24 THE COURT: -- and to any and all sexual harassment  
25 investigations involving Mr. Murri and you said that that

1 includes any investigation that Mr. Murri has been involved in.

2 MR. HANNA: I mean, for one thing, Judge, we don't  
3 even know how many he's done. It could be just one other one,  
4 you know, and if you notice from the investigative file that we  
5 did get --

6 THE COURT: Okay, but you still have to show the  
7 relevance it and I'm not understanding the relevance of, umm,  
8 if you seek all documents related to all sexual harassment  
9 investigations that involve plaintiff, Mr. Maddox and Mr. Murri  
10 and you said that that includes, umm, all and I asked about  
11 Mr. Maddox. We -- I think, umm, sort of exhausted that and  
12 that the question is whether the document from the other  
13 investigation, the 2017, 2018, you know, those two subsequent  
14 investigations are covered by attorney/client privilege, but in  
15 terms of all documents regarding all sexual harassment  
16 investigations that Mr. Murri has participated in, it's just  
17 not relevant and, umm, so.

18 MR. HANNA: I think a part of that case is on 390  
19 where it says defendant's actions taken in response to  
20 allegations and those --

21 THE COURT: The harasser's employment personnel file  
22 is relevant according to that case.

23 MR. HANNA: I understand that that was and that  
24 was -- it's the reasoning behind that, but that's fine.

25 THE COURT: Okay. And then this, umm --

1 MR. HANNA: So just so we're clear, Judge, it appears  
2 you are denying the portion connect for Mr. Murri, but you want  
3 further briefings for the investigations related to Mr. Maddox;  
4 is that correct?

5 THE COURT: Yes, that's true and then the comparator  
6 evidence that you're talking about.

7 MR. HANNA: Oh, you do want it for that, too? Okay.

8 THE COURT: No, I'm denying it for RFP 18 and 23  
9 because I don't see how comparator evidence is relevant in this  
10 case given the legal theories at issue here. I think we've  
11 addressed the privilege log to some degree. I will say I'm not  
12 understanding the allegation that the privilege log isn't  
13 specific enough because --

14 MR. HANNA: Well, as far as it being not specific  
15 enough, let me pull it up. For example, 12-6-17 it just says  
16 Dave Giles (phonetic) which is one of their attorneys and it  
17 says investigation materials. I don't know who he talked to.  
18 As far as the witnesses, they've never even been disclosed.  
19 Nothing has been disclosed about the 2017 and 2018  
20 investigation. We received one e-mail where they refer to  
21 defense counsel as the outside investigators. They don't even  
22 call them attorneys, they call them outside investigators were  
23 hired to investigate all wrong-doing after the January, 2015  
24 and then we saw that one e-mail and we said wait a minute,  
25 there's two other investigations, none of this is disclosed

1 anywhere. It's not even in the privilege log. Arguably  
2 they've waived all of their privilege regarding those  
3 investigations, so as far as the insufficient part of my  
4 privilege log motion to compel, it's because there's --

5 THE COURT: Ms. Hardy, why aren't there privilege  
6 logs concerning those investigations?

7 MS. HARDY: Because they're not otherwise  
8 discoverable, we're not required to disclose them on the  
9 privilege log and we have repeatedly for very solid reasons  
10 said that they're not relevant because plaintiff is gone from  
11 the workplace. What may have happened with Mr. Maddox and some  
12 other employee after she's gone has nothing to do with her  
13 claim.

14 THE COURT: Okay. Well, I'm going -- I don't know  
15 that and I, umm, and as I said earlier, to the extent that,  
16 umm, that the people who were interviewed during those  
17 substantive investigations, they could shed light on things  
18 that happened before Ms. Edwards resigned so you are going to  
19 need to supplement your privilege log. Mr. Hanna asked for  
20 that and I understand that you're saying that it's not  
21 relevant, but that is again a unilateral determination that  
22 it's not relevant and I think Mr. Hanna does get, he does have  
23 the right to determine whether especially since Mr. Rideout or  
24 Reverend Rideout I think was referring to Ms. Edwards'  
25 allegations, to what at least what, who was interviewed during

1 that time period and who participated in the investigation and  
2 even if ultimately the materials are protected by  
3 attorney/client privilege, that doesn't mean that all the  
4 witnesses aren't subject to depositions or some sort of  
5 discovery.

6 MS. HARDY: And we've never contended that they're  
7 not. In fact I expressed this, said earlier he's free to  
8 depose people to ask what they may --

9 THE COURT: Well, what I'm saying is that you need to  
10 augment the privilege log. You need to supplement the  
11 privilege log to include the subsequent investigations.

12 MS. HARDY: Well, and we can identify them, but  
13 you're not suggesting I would believe that we identify anything  
14 that leads to content of investigations.

15 THE COURT: No, I said the privilege log needs to  
16 include the documents that you're saying are privileged from  
17 those subsequent investigations.

18 MS. HARDY: Well, you mean identify that there was an  
19 investigation conducted by Danyelle Wright in 2017 as a  
20 result --

21 THE COURT: Just like your privilege log says here he  
22 a document that is covered by attorney/client privilege because  
23 it's -- I don't have it before me, but I felt, I did think that  
24 this, the identifying information on the privilege log was  
25 sufficient, but you do need to include the documents that



1     pertain to the subsequent investigations that you're arguing  
2     are covered by attorney/client and work product privilege.

3             MS. HARDY: I'm not clear how to do that without  
4     revealing -- I mean, let me take an example, Sonja Lengnick's  
5     investigation. She had an investigation report, she had an  
6     investigation notes. I mean, clearly those haven't been  
7     produced or Bates labeled because we contend they're privileged  
8     and they're not part of the case. I mean, I can describe them.

9             THE COURT: So you're saying you can include her name  
10    and investigation and, you know, you provide the descriptions  
11    to explain why you're withholding them.

12            MS. HARDY: Okay.

13            THE COURT: They should be part of the privilege log.

14            MS. HARDY: All right, we will do that. Umm, I'm  
15    sure there will be a disagreement. I mean, there's a line  
16    between describing them so that they understand that it was an  
17    investigation conducted by lawyers, you know, to provide advice  
18    to the client and saying she produced an investigatory report  
19    to the client describing what our conclusions were, but  
20    obviously --

21            THE COURT: That's not what you have on the privilege  
22    log now.

23            MS. HARDY: Well, I know. We did --

24            THE COURT: The log is just a description of what it  
25    is that you're withholding.

1 MS. HARDY: Well, yeah. As Mr. Davis is indicating,  
2 the line I'm struggling with, we don't want to walk into a  
3 waiver problem and yes, we can add even though I don't think we  
4 were obligated to do this before, but we'll do it at the  
5 Court's --

6 THE COURT: I don't agree. You're withholding  
7 documents that he's requesting and you're saying that they're  
8 privileged and it's not your unilateral decision that they're  
9 not relevant because they did have some connection. The  
10 termination did have some connection to Ms. Edwards because  
11 that, that later investigation was connected to Reverend  
12 Rideout's allegation so I think that Mr. Hanna doesn't have to  
13 take your word for it that it has no relevance whatsoever to  
14 Ms. Edwards. I'm trying to find the privilege log. Here it is  
15 right here.

16 MS. HARDY: I believe the obligation of the moving  
17 party is to, umm, if we assert relevance, we have a right to  
18 rely upon that until there's been a motion filed with the Court  
19 and a ruling of the Court that we're incorrect on relevance and  
20 that that objection --

21 THE COURT: Okay, I'm ruling that you're incorrect on  
22 relevance and you have here author, I've found it, the date,  
23 the author, the recipients, the subject and it just says things  
24 like e-mail with attachments and correspondence. You have the  
25 RFP number and the, you know, the type of privilege. To the

1 extent that you have said that these documents are privileged,  
2 then they should be included on the privilege log.

3 MS. HARDY: We will do that. I'm just, I'm concerned  
4 about the fact that if the Court's going to rule on relevancy,  
5 I haven't had a chance to really address that issue, it's been  
6 predominantly Mr. Hanna and there are just sound legal reasons  
7 why what happens after the plaintiff leaves --

8 THE COURT: I thought that you did argue it and I  
9 addressed it. You said that it has nothing to do with it  
10 because she was already discharged and what I've said more than  
11 once is that, you know, he doesn't know and I don't know to  
12 what extent after Reverend Rideout made his allegations any of  
13 the investigation had to, you know, reflected on what happened  
14 with Ms. Edwards, so to me it's, it's patently relevant or it  
15 has the potential, it's obviously has a potential that  
16 witnesses could have said things that are relevant so that  
17 would allow Mr. Hanna to then find out what documents they are  
18 and the very least find out who provided information to the  
19 investigators. So I think that you have made your argument.  
20 I've heard it. I've regurgitated it to you and I've told you  
21 why I think that that, the unilateral determination by the  
22 defense that these are not relevant is just not good enough.

23 MS. HARDY: All right. We will supplement the  
24 privilege log. We will identify within the bounds of what we  
25 think does not waive the privilege what Ms. Lengnick did, what

1 documents exist and what documents exist, the Danyelle Wright  
2 notes and the notes of the HR person, Michelle Zackay.

3 MR. HANNA: I mean, and they're going to --

4 MS. HARDY: And who was interviewed. I mean, they --  
5 Sonja Lengnick did a full interview to determine I think and  
6 it's clearly she counsel providing, there's a pending case, we  
7 get retained as a law firm. We asked what --

8 THE COURT: You have attorney/client documents on  
9 here on your privilege log. All I'm asking to you do is do the  
10 same thing that you did otherwise.

11 MR. HANNA: You know --

12 MS. HARDY: All right, we will.

13 THE COURT: And to then of course have the  
14 supplemental brief that addresses some of the -- addresses the  
15 nuanced issues raised regarding whether the statements made are  
16 privileged to the investigators and whether the investigating  
17 attorneys, whether the HR notes are covered by it and, you  
18 know, there's obviously the --

19 MR. HANNA: Judge, obviously that goes up to the  
20 point in time where Maddox got terminated.

21 THE COURT: Yes, that's what I'm referring to. Yes.

22 MS. HARDY: I'm sorry, what goes up until the point  
23 in time?

24 MR. HANNA: Investigation that was done up until the  
25 time he was terminated in case they're trying to say well this

1 was this investigation, but it's separate, but it's really  
2 about Malcolm Maddox being terminated because of this, you  
3 know.

4 THE COURT: That is definitely what I intended. To  
5 the extent that the defendant is saying that the documents are  
6 privileged and that's obviously front and center of what we've  
7 been discussing, then the documents need to be identified on  
8 the privilege log.

9 MR. HANNA: Judge, as far as the briefing since we  
10 added a second section to it, do you think we should extend it  
11 to more than five pages of briefing?

12 THE COURT: No, I don't because I don't think -- I  
13 think that, that you can identify the case law. I understand  
14 the arguments. I already understand the arguments and I don't  
15 need for you to regurgitate that and I am asking you to  
16 exercise some discipline in applying and cite opinions that are  
17 directly on point.

18 MR. HANNA: And just for my fought benefit when you  
19 as far as footnotes, is there a parameter where you don't want  
20 them? Do you want no footnotes? Do you just want few? I  
21 mean, I understand that you --

22 THE COURT: 50 percent of your case law should not be  
23 in the footnotes or more than 50 percent of your case law  
24 should not be in the footnotes.

25 MR. HANNA: Fair enough.

1           THE COURT: Footnotes should not take up more than  
2 half of the page.

3           MR. HANNA: Okay, that's fair.

4           THE COURT: Footnotes should not include the  
5 central -- the central case law that you're relying upon should  
6 be in the body. Something that is incidental, you drop in a  
7 footnote, about if you're relying on that opinion, it shouldn't  
8 just be footnoted and crowded and have, you know, in single  
9 space.

10          MR. HANNA: I just want to understand your preference  
11 and that's no problem.

12          THE COURT: You're saying my preference, but I'm  
13 telling you that from the perspective of someone who's trying  
14 to digest your arguments, it's just, it's really hard and I  
15 don't know any judge that wants, you know, the primary case law  
16 to be footnoted and I'm not the only one who would look at this  
17 as a clear attempt to circumvent the page limit.

18          MR. HANNA: I understand, Judge.

19          THE COURT: So I don't think that you should just  
20 interpret this as quote unquote "my preference", this is --

21          MR. HANNA: It's just, it was a -- it's a  
22 legally-complicated issue as evident by the fact that you  
23 wanted additional briefings and that's why I wanted to just  
24 give, put everything in there.

25          THE COURT: That might be true, Mr. Hanna, but you

1 need to find, you need to learn to edit and this is just way  
2 too much and it's way too much in the footnotes.

3 MR. HANNA: Understood. Thank you, Judge. Judge,  
4 should we discuss the briefing schedule?

5 THE COURT: I will. I'm just trying to get through  
6 the rest because this is definitely a lot. E-mails, is that  
7 where we are now?

8 MR. HANNA: And just for the record based on your  
9 prior order and the case law, we are permitted to go ahead and  
10 notice Ms. Sonja for deposition, correct?

11 THE COURT: No, I did not say that you can notice any  
12 attorneys for deposition.

13 MR. HANNA: Okay. Well, we'll address that issue.

14 THE COURT: I said that you could subpoena the  
15 employees who were interviewed.

16 MR. HANNA: We discussed the case law regarding  
17 deposing the --

18 THE COURT: I understand that that's your position  
19 and I told you that that's not my understanding of the law that  
20 because someone is hired to give legal advice that leads to  
21 someone's termination, that that attorney is then turned into a  
22 witness.

23 MR. HANNA: I mean, the ABA is very clear on that and  
24 if it --

25 THE COURT: Again, Mr. Hanna, please brief it. I've

1 heard it.

2 MR. HANNA: Understood. Will do.

3 THE COURT: Okay. So I think when it comes to  
4 e-mails, one problem is that you identify defendant's HR  
5 personnel as one of the custodians. Ms. Hardy, is that part of  
6 the problem? I understand that's part of the problem is the  
7 number of custodians who are identified?

8 MS. HARDY: May I allow Mr. Davis to respond?

9 THE COURT: Sure.

10 MS. HARDY: He handled the search and the review of  
11 names.

12 MR. DAVIS: Thank you, your Honor, and you're  
13 speaking of RFP 30 at this point?

14 THE COURT: Yes.

15 MR. DAVIS: Yes, well, there's two issues, yes. So  
16 first he's noticed he wants to search all HR personnel  
17 nationwide which would be, yes, that's hundreds of employees  
18 likely. That's definitely an issue, but even when we limit it  
19 to the, umm, we've identified in our response that we're going  
20 to do additional searches. We've agreed to do an additional  
21 search to try to resolve this and we've limited it to the four  
22 HR people who could have any conceivable relation to the  
23 allegations in the case and even doing the limited searches  
24 that Mr. Hanna asked for, we have something like 75,000 e-mails  
25 that are responsive to those requests with Tara or Edwards and



1 Malcolm or Maddox and then those four words, sex, hostile work  
2 environment, so forth and as I've tried to explain to Mr.  
3 Hanna, the word sex in a newsroom environment, every police  
4 squadron talks about sexual assault is a hit and every e-mail  
5 that mentioned sexual orientation, there's just a ton of false  
6 positives here and it would be an immense effort to search  
7 through these for frankly questionable relevance since we've  
8 already turned over the investigation files, we've turned over  
9 anything that's conceivably of relevance and he just wants any  
10 e-mail that says the word sex and has Tara or Malcolm in the  
11 e-mail as well. That alone just limited to our people is about  
12 75,000 e-mails at this point which is burdensome, overly  
13 burdensome.

14 MR. HANNA: Judge, we didn't ask for the word sex on  
15 its own. We asked for e-mails that say Tara Edwards and the  
16 word sex.

17 THE COURT: Well, it says Tara and sex or Edwards and  
18 sex.

19 MR. HANNA: Right.

20 THE COURT: Malcolm and sex and Maddox and sex.

21 MR. HANNA: Right, so all of --

22 THE COURT: So as reporters they're saying that it  
23 could end up being --

24 MR. HANNA: So and in response to that e-mail that  
25 Mr. Davis sent me last night, I responded and said okay, well,

1 you've clearly done the search and you're telling me you get  
2 75,000 response e-mails, give me the breakdown, tell me which  
3 one of these so when you do Tara and sex you're getting 50,  
4 five, 100,000, whatever and then we could look at it and have  
5 discussion and say okay, well that one's probably too big,  
6 let's get rid of that, let's keep this and didn't respond to  
7 that and then the other thing that we asked is whether his  
8 electronic discovery expert conducted a service check? In  
9 these types of, you know, electronic and, you know, we've done  
10 these on nationwide class actions with thousands of people and  
11 a lot of times you will get one e-mail produced to you 400  
12 times, right? So when it -- I would guess that the, even the  
13 75,000 number, that's probably more like 10,000 once you copy  
14 all, you know, in the e-mail pages the fact that three of them  
15 are just running white pages in the add and each of those pages  
16 probably has okay or two lines of substantive into it, but  
17 regardless, we're not asking for a categorical search. We're  
18 asking for a search limited, an advance search based on search  
19 terms and a combination of search terms and I think anything  
20 that has, that talks about Tara and some of the words that  
21 we've listed or Maddox and some of the words we've listed is  
22 highly relevant. That said, I'm willing to further engage in  
23 this process and I asked them to give me the breakdown of the  
24 purported 75,000 and if we could look at that and have a  
25 conversation, then we can say okay, well, this one might be a

1 little too big, maybe we can narrow this one in this manner to  
2 make sure we're not getting as many miss-hits and go from  
3 there.

4 MR. DAVIS: Your Honor, my response --

5 THE COURT: I'm trying to figure out, so what would,  
6 what would, what type of documents -- why would the HR have all  
7 this?

8 MR. HANNA: Well, if they don't, then they're not  
9 going to have that many responsive e-mails. They're the ones  
10 investigating these claims.

11 THE COURT: Well, there would be a loss of false hits  
12 maybe, but I'm just trying to figure out, I understand that the  
13 allegations are that Mr. Maddox sent some obscene, you know,  
14 messages to Ms. Edwards.

15 MR. HANNA: Among other things.

16 THE COURT: I'm trying to figure out what you're  
17 anticipating the HR people would have?

18 MR. HANNA: Well, if they're sitting there saying --  
19 look, at the end of the day they have not disclosed every --  
20 they say they've given us the investigative file? I don't  
21 really know what's fully out there.

22 THE COURT: You don't answer my questions a lot,  
23 Mr. Hanna. I asked you a specific question. What are you  
24 anticipating that the HR department might have?

25 MR. HANNA: If there's an e-mail in the HR department

1 for example that says well, you know, Maddox, umm, in this case  
2 you should really fire him, you know, we messed up before when  
3 we had this other case, there was a guy couple years back,  
4 Maddox, and he said some of these terms are in there and we  
5 didn't fire him and it's causing this colossal mess, we knew we  
6 should have fired him for example.

7 THE COURT: So you're not at -- I mean, why not ask  
8 about e-mails or have you asked about e-mails regarding  
9 Mr. Maddox and Ms. Edwards?

10 MR. HANNA: Yeah. I mean, well, this is that search.  
11 You can't ask for e-mails on a categorical manner and actually  
12 get a response. You have to -- it wouldn't be fair to them  
13 because how are they going search -- they'd have to search their  
14 whole pool which is kind of what I'm having to do in my issues  
15 in the Facebook. They --

16 THE COURT: Well, let me ask them. How would you do  
17 that? How would you search for e-mails regarding the  
18 complaints that Ms. Edwards has about, you know, Mr. Maddox and  
19 any of the investigation?

20 MR. DAVIS: I believe that that search has been done,  
21 your Honor, and that's a different here now and I just want to  
22 be clear and I want to answer your question --

23 THE CLERK OF THE COURT: Mr. Davis, just make sure  
24 you turn the mic towards you so we can hear you.

25 MR. DAVIS: Yes. First, I just want to be clear. So

1 the request here is not limited to --

2 THE COURT: That's not what I asked you. I asked you  
3 how did you go about getting the e-mails. You have already  
4 turned over e-mails?

5 MR. DAVIS: I -- yes, I believe, I believe and I was  
6 not the person who did this, but I believe my understanding of  
7 how that search would be if you're talking about here we know  
8 who the HR people who would have been involved in, for  
9 instance, the Maddox investigation. We can look through their  
10 e-mails in the relevant time frame that mentions Malcolm or  
11 Maddox. This is far broader because this is anyone in --

12 THE COURT: I'm not asking you what that says. I'm  
13 trying to figure how to get Mr. Hanna the discovery he needs so  
14 that can feel comfortable that you're not leaving out a  
15 significant number of e-mails and so you're saying that his  
16 search terms end up having 75,000 hits. How can you assure  
17 Mr. Hanna that he has received the relevant e-mails?

18 MR. DAVIS: This is what I'd say, your Honor. If he  
19 limits it to the HR people, the four HR people and we can limit  
20 it to the time frame, this is going from 2011 to the present.  
21 If we can limit it to the time of the investigation, 2015 and  
22 those four people, then I think that it would be a much smaller  
23 number that we could look through.

24 THE COURT: Well, obviously Mr. Hanna believes that  
25 since there were ongoing investigations, that it's going to be

1 relevant up until the time that Mr. Maddox was fired, so what  
2 about from 2000 -- from the time of the complaint, 2015 until  
3 Mr. Maddox was fired?

4 MR. DAVIS: I will reconfirm that we haven't already  
5 produced everything for those four HR people and if we haven't,  
6 then I think that that number would be far smaller and it would  
7 be manageable, but I believe that may have already been  
8 completed. Like I said, the request that we're discussing --

9 THE COURT: I know that. I'm not going backwards.  
10 I'm just trying to go forward and figure out how to get  
11 Mr. Maddox -- Mr. Hanna what he needs.

12 MR. DAVIS: If it's limited to the four people that  
13 we've identified here and is 2015 to the present, if it hasn't  
14 already been done, I think that's going to be a much smaller  
15 number and we can do that.

16 THE COURT: Would you use his search terms?

17 MR. DAVIS: I could use those search terms and if --  
18 I could use those search terms. I would suspect and I'll tell  
19 the Court this, I would suspect because the people who he has  
20 included before included producers and that's who's getting all  
21 these e-mail blasts that mentions sex assault in Oakland County  
22 for instance. Every day we're getting e-mails like that. If  
23 it's limited to HR people, I suspect the number for those  
24 custodians will be lower, so I think that I could let him know  
25 how many are in that time frame and those four people.

1 THE COURT: Oh, because what we talked about was,  
2 umm, it was -- the five custodians are, remind me of the five  
3 custodians.

4 MR. HANNA: Yes. So it's Malcolm Maddox, Mike Murri,  
5 Dave Manney, Edoardo Fernandez, Barbara Roethler, Glenda Lewis  
6 and the HR people and as far as what he's saying, I  
7 specifically said look, for because one of the custodians is  
8 Malcolm Maddox and I'm saying, you know, don't do the ones that  
9 have Malcolm and these things in there because obviously that  
10 might lead to a mis-hit, but these individuals and we need to  
11 go back as far as 2012, at least for the non-HR individuals  
12 because for example Mike Murri, the manager, if there's an  
13 e-mail there about Edwards harassment from him in 2013 and  
14 nothing happened in response to that e-mail, that shows that  
15 they had knowledge.

16 THE COURT: Whose harassment?

17 MR. HANNA: Edwards.

18 MR. DAVIS: Edwards has admitted that she complained  
19 once about Maddox and she gave the date so I'm not sure what  
20 this is about. This is the --

21 MR. HANNA: It's not about her complaining, it's  
22 about him receive -- okay, so for example we deposed a former  
23 producer. She testified that she advised her supervisor that  
24 Tara Edwards was being sexually harassed in 2014. If you  
25 notice how they're wording their response, they're limiting it

1 to complaints made by plaintiff so if a third party said hey by  
2 the way you need to watch out, Maddox is sexually harassing  
3 her, they didn't give us that.

4 THE COURT: Then ask that question. You need to ask  
5 that question --

6 MR. HANNA: That is --

7 THE COURT: -- and instead of searching for e-mails,  
8 because it's -- what you're saying is there was one person and  
9 you deposed that person.

10 MR. HANNA: That's correct.

11 THE COURT: Okay, so you can ask for evidence about  
12 any e-mail communication between that person and Mr. Murri in  
13 2014, but this is again, this is another type of fishing  
14 expedition that you want to just look to see whether anyone  
15 possibly made a complaint and to have this cast this wide net  
16 where as they said, Ms. Edwards said that she made her  
17 complaint in 2015.

18 MR. HANNA: Let's take a look at it, Judge. So for  
19 example the first custodian is Malcolm Maddox. If he has any  
20 e-mail that has the words Edwards and one of these other, you  
21 know, abrasive terms, I think that e-mail is discoverable and  
22 that's, that's what's at issue here. The next custodian is  
23 Mike Murri, the manager. If he has an e-mail that talks about  
24 Tara Edwards and one of these words, that e-mail's discoverable  
25 and that's all I need to --



1           THE COURT: You know what, there's relevance and  
2     you're saying discoverable. There's relevance and then there's  
3     proportionality and again it's not a fishing expedition so  
4     you -- the very definition of what you said is there might be  
5     within, you know, from 2011 until 2018, there might be an  
6     e-mail that somebody sent to Mr. Murri saying that Mr. Maddox  
7     is harassing Ms. Edwards, but in order to do that, we have to  
8     get 75,000 e-mails. That doesn't make sense and that's why we  
9     need to look at how we're going to and, you know, I think it  
10    goes without saying that discovery is not supposed to be  
11    perfect, but just casting that wide net to potentially find  
12    some diamond in the rough, some, you know, some needle in the  
13    haystack, it just doesn't make sense.

14           MR. HANNA: So how about we limit it, Judge, to from  
15    2014 until the date of Maddox's termination?

16           THE COURT: I think that we just said from 2015, the  
17    time of her complaint until the time of his, umm, termination.

18           MR. HANNA: I think it's highly relevant, Judge, if  
19    we could go back a little bit, at least one year because  
20    especially for and I can maybe limit it for that one year to  
21    one custodian which is the manager because I think it's highly  
22    relevant if in that one year prior to the complaint he was  
23    receiving notice of what was going on, not taking any action  
24    because they, you know, and then she finally complained  
25    herself.

1 THE COURT: Okay because you, but you only had one  
2 person who said that she made that complaint. See, you're  
3 still -- it's still speculative. It's still maybe somebody  
4 made a complaint.

5 MR. HANNA: I don't need to prove that discovery  
6 exists for me to request it.

7 THE COURT: That's true, but at the same time you  
8 can't go on a fishing expedition.

9 MR. HANNA: I mean, I think compared to their  
10 requests, Judge, this is limited to five custodians and in an  
11 advanced search of --

12 THE COURT: Five custodians plus four human resources  
13 personnel, so we're talking about nine custodians.

14 MR. HANNA: Yeah, their requests was for all current  
15 and former employees.

16 THE COURT: And I said that that was too broad.

17 MR. HANNA: No, their requests are granted for all  
18 current and former employees, all communications, all text  
19 messages, all e-mails and you've granted those requests.

20 THE COURT: Regarding what?

21 MR. HANNA: Regarding the text messages, regarding  
22 the e-mails, regarding a lot of things. Regarding the social  
23 media. It's for all current and former employees. RFP number  
24 two which was granted --

25 THE COURT: For communicating with -- anyway, I'm

1 really exhausted by you saying you gave it to them because I'm  
2 really trying to take each individual request, you know, and  
3 analyze that and it really sounds like I'm talking to my child  
4 when it's well, you gave it to them. It's just, it's not  
5 productive. I'm trying to really get to relevant documents --

6 MR. HANNA: I'm not trying to sound like a child, but  
7 I'm just saying that I believe that --

8 THE COURT: Okay, I need to not, umm, I need to try  
9 to get a manageable amount of discovery.

10 MR. HANNA: I understand, Judge. Again, I'm not  
11 trying to sound like a child, but I just think that that's  
12 reflective of what the Court sees as being relevant and  
13 discoverable.

14 THE COURT: Well, yeah, but each time you compare  
15 apples and oranges and I don't think that what you said is  
16 actually -- anyway, I'm not, I'm not trying to compare -- it's  
17 just not helpful and nothing that you said indicated 75,000  
18 e-mails and so the defense has explained why this has resulted  
19 in an over-inclusive and so I'm trying to narrow it down so  
20 that it's manageable.

21 MR. HANNA: Yeah, and --

22 THE COURT: And so you're saying that there are  
23 potentially other e-mails from 2014. I don't see evidence of  
24 that except that you said that one person said that they  
25 mentioned it to or they reported it to the, umm, to Mr. Murri.

1 I told you that you could include that person, any e-mails  
2 between that person and Mr. Murri dealing with, you know, her  
3 complaint, but in terms of --

4 MR. HANNA: It actually wasn't Mr. Murri, but --

5 THE COURT: -- any custodian or anything from 2014, I  
6 think that that is getting to a fishing expedition.

7 MR. HANNA: So, I mean --

8 THE COURT: I'm going to have to wrap this up  
9 somehow.

10 MR. HANNA: Well, what is the limitation that the  
11 Court --

12 THE COURT: So, umm --

13 MR. HANNA: From 2015? Is that what the --

14 THE COURT: I asked you, so Mr. Davis said that from  
15 2015, you said from 2015 to 2000 -- to Mr. Maddox's termination  
16 was, did you just say with the four personnel?

17 MR. DAVIS: With the four personnel, your Honor, I  
18 believe that that would be a much smaller search because  
19 they're not likely to get --

20 THE COURT: Is Mr. Murri part of the --

21 MR. DAVIS: No. He's the general manager, your  
22 Honor.

23 THE COURT: So, but why wouldn't his, any e-mails to  
24 him be relevant or included?

25 MR. DAVIS: Well, we did do -- I mean, he was one of

1 the custodians. I mean, as I stand here, I can't tell you how  
2 many were in Murri's file. I think his may be a little bit  
3 less. What I know is that there were 75,000 e-mails. There's  
4 about six, there's 10 custodians and it was about 75,000 or so  
5 e-mails. Now like I said, I believe the HR people have less  
6 because one of the key reasons for this overbreadth is because  
7 the word sex or sexual or harassment which are the terms that  
8 he wants are very common in, umm, I just from the first  
9 custodian looked at, they're very common. I could go back to  
10 Mr. Hanna and tell him this is how many are in Murri's e-mail  
11 box with these search terms and these are how many who are in  
12 the four HR people and maybe that will be a smaller number and  
13 we can figure something out. For instance --

14 THE COURT: You said, and what about Glenda, what's  
15 her name, Glenda?

16 MR. HANNA: Glenda Lewis.

17 THE COURT: Lewis. So why do we need that from her,  
18 Mr. Hanna?

19 MR. HANNA: She was one of the people that spread,  
20 you know, that perpetuated the hostile work environment with  
21 Mr. Maddox. Ironically she's also -- well, that's why. She's  
22 one of them, she's a very important witness and these are all  
23 of the people that I have. I have Malcolm Maddox who's Malcolm  
24 Maddox. I have Mike Murri who's the general manager. I have  
25 Dave Manney who is in-house counsel. I have Edoardo Fernandez

1 who is a manager at plaintiff's facility and Barbara Roethler  
2 who's the other manager at plaintiff's facility so I have three  
3 immediate supervisors, the general counsel, Malcolm and one  
4 witness or -- yeah. Yeah.

5 MR. DAVIS: Your Honor, Manney is not the general  
6 counsel. I'm not sure who Mr. Hanna's talking about.

7 MR. HANNA: I'm sorry, Dick Manney is also a manager.  
8 I was confusing him with some one else, so I have four  
9 managers, forgive me, I have four managers at her facility who  
10 are her direct report and that's all I've limited it to and I  
11 think the fact that her management has information or potential  
12 e-mails that talk about Tara Edwards and one of these words or  
13 Malcolm and one of these words is highly relevant.

14 THE COURT: Well, it may or may not and that's the  
15 problem is whether or not these hits are going to be false hits  
16 or relevant hits.

17 MR. HANNA: And I'm willing to --

18 THE COURT: And that's why I've asked Mr. Davis what  
19 he did to assure that you covered the necessary information.

20 MR. DAVIS: And let me take one step back, your  
21 Honor. If the search term was Malcolm Maddox or Tara Edwards,  
22 that might be different, but there are lots of Taras and  
23 Edwards is a common name and I know for a fact that a lot of  
24 these hits are coming up with a different Malcolm who's on one  
25 of these e-mails. If it was limited to the full name, I

1 suspect that would be a smaller number. I think that the  
2 problem is when you're separating out variations of a name plus  
3 five variations of very, very common words, that's why we're  
4 getting the 75,000, in the news business, like I said. So if  
5 we're going to have -- I would be willing to have a further  
6 conversation with Mr. Hanna. I think that, you know, there's  
7 assumptions being made about, you know, how our electronic  
8 discovery is set up, but we can have that discussion off the  
9 record. My point is is that it can be narrowed.

10 THE COURT: All right. I'm going to say that this is  
11 one that you all need to meet and confer on.

12 MR. HANNA: Yeah, I would, just to make this simple,  
13 they're claiming 75,000. Like I asked yesterday, just give me  
14 the breakdown, let me know --

15 THE COURT: That's why you're going to meet and  
16 confer.

17 MR. HANNA: And if the parties are not able to  
18 resolve that?

19 THE COURT: Then you can bring it back to my  
20 attention.

21 MR. HANNA: Okay.

22 THE COURT: I'll talk about, umm, because it's almost  
23 5:00 and we still have more to do and I have an interview  
24 waiting on me that was supposed to start at four.

25 MR. HANNA: I believe the remaining will be pretty

1 quick, Judge.

2 THE COURT: I'm sorry?

3 MR. HANNA: I believe the remaining will be pretty  
4 quick, the remaining issues.

5 THE COURT: Okay. The text messages.

6 MR. HANNA: Yeah, we haven't gotten a single text  
7 message from defendant. We've asked, we've limited it to a  
8 few, I mean, they're, you know, they've literally moved to  
9 compel what we've already produced. They haven't produced a  
10 single text message for these key witnesses which are the  
11 manager Mike Murri, Malcolm Maddox who's Malcolm Maddox can  
12 Dave Manney, Edoardo Fernandez and Glenda Lewis. Five  
13 custodians, you know, and there was two requests. We've even  
14 limited the, umm, we've limited this request to reflect the  
15 same parameters that they requested for the text messages which  
16 is, namely, you know, things that are concerning Tara Edwards,  
17 Malcolm Maddox, the father of her child, her pregnancy, sexual  
18 matters, rumors, retaliation, harassment, any complaints others  
19 made regarding defendant and any document that the defendant  
20 believes relates to their defense of the plaintiff's claims.  
21 These are the exact --

22 THE COURT: Okay, now when you say text messages  
23 between these people --

24 MR. HANNA: Yep.

25 THE COURT: -- and relate it to harassment, sexual



1 matters.

2 MR. HANNA: That's the exact same request that this  
3 made for us.

4 THE COURT: And I told them that that was, umm, that  
5 this is not Tara Edwards and sexual matters, this is not  
6 Malcolm Maddox and sexual matters, this is related to as an  
7 individual category sexual matters.

8 MR. HANNA: No, we've literally produced text  
9 messages about her talking to current colleagues.

10 THE COURT: You're not paying attention to what I'm  
11 saying to you, Mr. Hanna. You have A, Tara Edwards, B, Malcolm  
12 Maddox, C, the father, so those are relevant to this case, but  
13 then you have D, sexual matters and you're not saying sexual  
14 matters, that's an individual category.

15 MR. HANNA: Yeah.

16 THE COURT: So Mr. Murri and Mr. Manney could be  
17 having text messages with one another about sexual matters that  
18 has nothing to do with Tara Edwards or Malcolm Maddox.

19 MR. HANNA: That same information was compelled by  
20 defendants and it was produced by plaintiff.

21 THE COURT: I don't think that you're really  
22 listening to what I'm saying.

23 MR. HANNA: You're saying it's two third parties.

24 THE COURT: Two third parties talking about sex with  
25 people who have nothing to do with this case.

1 MR. HANNA: Fair enough, Judge. We'll limit it to  
2 sexual matters relating to them.

3 THE COURT: And rumors, so it's --

4 MR. HANNA: Rumors relating to plaintiff and Malcolm  
5 Maddox.

6 THE COURT: Okay. I think that the problem that I  
7 understand that, umm, one of the problems is that they're  
8 talking about their custody and so can someone speak to that?

9 MR. HANNA: Yeah --

10 THE COURT: No, I wanted the defense to speak to the  
11 issue of custody of this information.

12 MR. DAVIS: I will do that, your Honor, but if I  
13 could go back at the end and discuss some of the other issues  
14 that Mr. Hanna brought up because it is important, but as far  
15 as custody, as we've stated, Murri, Manney -- I'm sorry, Murri,  
16 Fernandez and Lewis -- I have to back up. First, your Honor,  
17 this is -- I actually have to address this first. The actual  
18 request and this is important --

19 THE COURT: Okay. Can you please address custody  
20 because I, I, I asked for the custody issues.

21 MR. DAVIS: I do, your Honor, but this is why it's  
22 important. The request was for any text messages sent or  
23 received by the custodians concerning or related to Tara  
24 Edwards or Reverend Rideout. That was all that was requested  
25 and we asked the custodians, the people who are still our

1 employees, Murri, Manney and Lewis, to search for any text  
2 messages related to Tara Edwards and they reported that they  
3 don't have any so we've responded to that -- I'm sorry,  
4 Fernandez, right, and Dave Manney is no longer an employee. We  
5 asked him anyway if he would look and he did look and he  
6 reported he has none about Tara Edwards and Malcolm Maddox, the  
7 issue with him is we don't have custody of his cell phone. He  
8 was terminated. He, assuming he has a company cell phone  
9 which, he was not at the station when he was terminated. We  
10 don't have custody of his cell phone. We don't even know where  
11 he is. Mr. Hanna has made it clear he can't even find Malcolm  
12 Maddox to subpoena him, but somehow we're supposed to have  
13 custody of the cell phone. We don't even believe he's in the  
14 state, so clearly if he can subpoena Maddox, he can ask Maddox  
15 to turn over the text messages or ask him to turn over the cell  
16 phone, but our obligation is limited to what we have in our  
17 possession, custody or control and we don't have access to the  
18 cell phone, so I'm not sure what else there is to do on that.

19 THE COURT: So you're saying that you have no text  
20 messages from Murri, Manney, Fernandez or Lewis, that they've  
21 checked and they have no text messages that regard or regarding  
22 Tara Edwards or Malcolm Maddox?

23 MR. DAVIS: Regarding Tara Edwards which is what was  
24 asked for, your Honor. The request right here, I mean, this is  
25 what -- this is --

1 MR. HANNA: There's two requests. There's 31 and 40.  
2 You're looking at 31. If you look at 40, it has that  
3 specifically in there and Judge, these are third parties. You  
4 cannot ask a third party to, to search for you and say hey did  
5 you look -- I mean, the order that was compelled for us, we  
6 have to search it, we have to, we have to give an account to  
7 defendants how it was searched --

8 THE COURT: That's -- you know, again, you, you --  
9 please tone it down.

10 MR. HANNA: I just want the same treatment for both  
11 sides and I would ask that they provide a log --

12 THE COURT: I know, I know, Mr. Hanna. I know that  
13 you think that I've treated you unfairly. I have not -- I've  
14 tried to be as fair as possible and I have given -- I have  
15 demanded things of the defense that they didn't want to  
16 disclose. I have narrowed their discovery requests and, umm, I  
17 need you to tone it down.

18 MR. HANNA: Sure. Judge, if we go to the company  
19 handbook --

20 THE COURT: So, umm --

21 MR. HANNA: If I may --

22 THE COURT: -- Mr. Davis, you were looking at 40?

23 MR. DAVIS: And again, Mr. Hanna is just expanding  
24 beyond what 40 asked for. It's text messages that are, umm,  
25 that were between these individuals named that regarding

1 investigation into plaintiff's 2015 allegations of sexual  
2 harassment, sexual misconduct, discrimination and/or  
3 retaliation, so 40 is also limited to the investigatory  
4 documents and as we've stated, we've turned over all the  
5 investigatory documents. I can confirm that none of those  
6 are -- I can reconfirm that none of those are text messages,  
7 but we've turned all of those over. What the issue is here and  
8 this is what's important to say, he's unilaterally expanding  
9 the scope, from what he said because he had to turn over, so  
10 now he wants us to turn over things about sexual matters and  
11 rumors that don't have anything to do with Edwards?

12 THE COURT: Okay, let me find this again so I can  
13 look at the specific wording.

14 MR. DAVIS: It's docket number 31-6 if that helps,  
15 your Honor.

16 THE COURT: It does help.

17 MR. DAVIS: And it's page ID 862.

18 MR. HANNA: Internally page 28 of the --

19 (Pause)

20 THE COURT: Okay. It does say in 40 regarding  
21 investigation into plaintiff's 2015 allegations of sexual  
22 misconduct and retaliation and then for 23?

23 MR. HANNA: 31, Judge.

24 THE COURT: 31?

25 MR. DAVIS: That's page 856, page ID 856.

1 MR. HANNA: Judge, our position is those terms are  
2 encompassed --

3 THE COURT: All text messages sent related to Tara  
4 Edwards or Reverend Rideout and the answer to all those except  
5 for Malcolm Maddox is none? Is that your answer?

6 MR. DAVIS: For Tara Edwards, yes. We had a, we  
7 objected to Rideout on relevance, but I think, yeah --

8 THE COURT: Okay.

9 MR. DAVIS: -- but for Edwards, then certainly, yes.  
10 For everyone except for Maddox who we don't have his phone, the  
11 answer is no.

12 THE COURT: Okay. So are you saying that the text  
13 messages regarding Reverend Rideout don't concern Ms. Edwards?

14 MR. DAVIS: Well, our position has been, your Honor,  
15 and I don't know if you've ruled on this yet, but --

16 THE COURT: No, I haven't, but I'm saying that you're  
17 saying that the text messages regarding Reverend Rideout are  
18 irrelevant and I'm asking you whether any of them relate to the  
19 allegations Ms. Edwards made.

20 MR. DAVIS: Your Honor, yeah, my answer if it related  
21 to Edwards, we didn't withhold anything because Rideout's  
22 mentioned in addition to Edwards and we made that clear in our  
23 reply brief so if Edwards, it's Edwards and Rideout, then it's  
24 covered by the Edwards assertion there is nothing. If what  
25 they're now asking for is things about Rideout unrelated to

1 Edwards, that's clearly irrelevant. So we've addressed that in  
2 our reply, your Honor, so that would be the answer.

3 THE COURT: Mr. Hanna?

4 MR. HANNA: Which part would you like me to address,  
5 Judge? The Rideout?

6 THE COURT: Well, first all they're saying they have  
7 no text messages and Malcolm Maddox is nowhere to be found, but  
8 that the individual custodians other than Mr. Maddox that you  
9 referred to don't have text messages regarding Ms. Edwards.

10 MR. HANNA: Yeah, that's because they never searched,  
11 Judge. They -- we didn't get a single text message in response  
12 to defendant's recovery request. They just asked third parties  
13 hey, do you have responsive texts. According to their company  
14 handbook, defendant reserve the right to monitor, access, read,  
15 disclose and use any information on the equipment at any time  
16 and without prior notice. Mind you, Judge, we've limited this  
17 request to the company, not their private cell phone. The  
18 equipment must also be returned at the time an employee leaves  
19 the company. They've clearly failed to secure his.

20 THE COURT: Well, so whether they failed this their  
21 procedure to secure the, Mr. Maddox's cell phone or not, if  
22 they don't have the cell phone, then they don't have it.

23 MR. HANNA: Yeah and that's a spoliation issue and  
24 we'll deal with them.

25 THE COURT: I actually, umm, you're saying that they

1 didn't turn over a single text message. I'm not sure that I  
2 would assume that any of these individuals would be discussing  
3 the investigation by text message. I would have course assume  
4 that there would be some e-mails, but I will ask the defense  
5 what steps did you take to assure that Mr. Manney,  
6 Mr. Fernandez, Ms. Roethler, Glenda Lewis, that they have no  
7 text messages referencing Ms. Edwards or Mr. Maddox or this, or  
8 her allegations?

9 MR. DAVIS: Like I said, your Honor, for the three  
10 current employees would just asked them to review their own  
11 text messages similar to the way Ms. Edwards was asked to  
12 review her text messages for anything responsive and they said  
13 there was nothing, so no, we did not impound their phones and  
14 do it for them, but there is no -- he's cited nothing to  
15 suggest that you're supposed to do that. This was a very  
16 simple search. They're not -- we weren't asking them to sort  
17 by relevance; do you have any texts about Edwards, very simple.  
18 Manney is not even our employee so that was wholly gratuitous,  
19 but we asked him the same thing. Manney's now in New York with  
20 a different station.

21 THE COURT: Okay, so --

22 MR. DAVIS: And Roethler was not one of the people on  
23 this list here, so.

24 THE COURT: I'm sorry, who wasn't? Roethler is on --

25 MR. DAVIS: I believe he mentiioned --



1 THE COURT: -- oh, that's 35. I'm sorry, I'm looking  
2 at the wrong one.

3 MR. HANNA: Judge, the difference between Edwards  
4 doing this search and these third parties is Edwards is the  
5 plaintiff and I'm asking the defendant. I'm not asking -- if  
6 defense counsel doesn't want to, that's similar to saying that  
7 I don't have to, but that's not -- there's a difference between  
8 that and asking Tara or asking the defendant so somebody that  
9 the defendant can be held liable for their representation. It  
10 doesn't have to be counsel, it could be whoever, but to ask a  
11 third party is not proper especially when it is in your custody  
12 and control so they have not done the search.

13 MR. DAVIS: Your Honor, they're not a third party,  
14 they're our employees and we asked them. I mean, again, if  
15 Mr. Hanna had cited any authority suggesting that you can't  
16 just ask your employees to produce documents, that's going to  
17 really increase the cost of an investigation because you have  
18 to have a lawyer go in and physically pull it out? That's not  
19 what the law is. We asked our employees to search their files;  
20 they did so. He has to basis to suggest, particularly when he  
21 hasn't even deposed them yet that they have not properly done  
22 that search or they have withheld something. He has no basis  
23 for that. It's been searched and there's nothing.

24 THE COURT: Okay. I'm going to deny it without  
25 prejudice, but Mr. Hanna, you can ask these witnesses at their

1 depositions whether they engaged in any text messages and what  
2 steps they took to search for any text messages. If it turns  
3 out that there, that they have not done an adequate job of  
4 checking their text messages or if they are testifying to text  
5 messages that weren't disclosed, then we can look further.

6 MR. HANNA: I would object to that, Judge. I think  
7 that --

8 THE COURT: Well, you can certainly objection to  
9 everything to Judge Borman --

10 MR. HANNA: Okay.

11 THE COURT: -- and I'm sure that you will.

12 MR. HANNA: The remaining items are the items, Judge,  
13 that counsel for defendant conferred and said they would  
14 produce and then they didn't actually end up producing it.  
15 They indicated that they would amend RFP 42, interrogatory one  
16 and interrogatory six.

17 THE COURT: I'm sorry, I thought that I was --  
18 that's -- I have text messages, okay, requests agreed to. All  
19 right. Who's going to speak to that from the defense?

20 MR. DAVIS: I can, your Honor.

21 THE COURT: Did you agree that you're going to --

22 MR. DAVIS: Yeah, let me address that. First, let's  
23 talk about the interrogatories. Mr. Hanna, he served  
24 interrogatory number and I don't know if your Honor needs to  
25 pull it out, but it basically says please identify all people

1 that you believe are going to have substantive evidence  
2 regarding the claims and allegations in this case and we  
3 provided a list. The protective order finally got entered and  
4 then we produced all the addresses that were on that list. It  
5 seems like what Mr. Hanna's saying now is that we should have  
6 expanded our list to include additional people that he wants to  
7 add to the list, but that's, that's not what we agreed to. We  
8 agreed to give him the addresses that were not on the  
9 unprotected version of interrogatory one, so if he wants to  
10 file a new request for additional names, go ahead, but we've  
11 responded to interrogatory one. We've done what was asked.

12 MR. HANNA: Judge, these are the people they  
13 identified on their witness list. This is not my people, these  
14 are the people they identified on their witness list that are  
15 current and former employees. They indicated in their witness  
16 list they're going to use testimony at trial, but they haven't  
17 given that information aside from the additional individuals  
18 that came out today regarding these other investigations that  
19 were interviewed and had notes that also need to be included.

20 MR. DAVIS: Your Honor, this is a different question.  
21 Now is he saying that our interrogatory one response which  
22 asked for a subjective impression of the defendant, we think  
23 that a lot of these witnesses are irrelevant. This is a  
24 completely different issue.

25 THE COURT: Okay, so it says I at four. So in the

1 e-mail you said we will provide a revised interrogatory  
2 response to RFP one with the contact information.

3 MR. DAVIS: Correct, and everybody who is --

4 THE COURT: They're saying that you did that.

5 MR. DAVIS: Everyone who was previously identified in  
6 interrogatory one without an address, we provided the  
7 addresses. What Mr. Hanna's saying is that we should have  
8 added new names to the list and that's a completely different  
9 issue. That's not before the Court.

10 THE COURT: And Mr. Hanna, what new names are you  
11 saying?

12 MR. HANNA: Well, they've listed 19 names on their  
13 witness list: Timothy Dye, Lisa Gass, Michael Glover, Jeremy  
14 Johnson, Chris Jones, Jim Kiertzner, Tim Kochenderfer, Ann  
15 Marie LaFlamme, Erin McDonald, Jordan Nagel, James Norber.  
16 Nate Penn, Ramone Rosario, Nima Shaffe, Carol Spann, Sarah  
17 Willets-Klinger --

18 THE COURT: I -- I --

19 MR. HANNA: I can provide them the names later,  
20 judge, but they've --

21 THE COURT: I'm trying to open the answers to  
22 interrogatories. So this motion doesn't say what the  
23 interrogatories request and unfortunately this is not  
24 opening -- oh, here it is.

25 MR. HANNA: Would you like me to read it, Judge?

1           THE COURT:  Nope.  Okay, so it says identify the  
2     name, telephone number, et cetera of anyone who has knowledge,  
3     so Mr. Davis, why wouldn't you include the, everybody who's on  
4     the witness list?

5           MR. DAVIS:  Your Honor, this is comparing apples and  
6     oranges.  When we do a witness list, we include every name  
7     that's basically popped up anywhere in discovery because we  
8     don't want to be locked out later if we discover something  
9     relevant.  That's a different question than what we agreed to  
10    which is the answer to interrogatory one, we didn't give the  
11    addresses, now we have a protective order and we gave him the  
12    addresses so that's all that was really intentioned.  If he  
13    wants to send a second interrogatory request asking for the  
14    addresses of other people on the list, that's different and  
15    we'll address that at that point, but that's not what's before  
16    the Court and this is just a unilateral attempt to expand  
17    what's actually before the Court and it's really not  
18    appropriate so we have done what we said we were going to do  
19    with respect to interrogatory number one.

20          MR. HANNA:  Judge, this is seriously curtailed  
21    discovery.  They -- first of all they didn't give the address  
22    and contact information of these individuals after the  
23    protective order, they gave it four, five months after the  
24    protective order after we moved to compel it and the same day  
25    as their response.

1 THE COURT: Okay, but those people are not at issue.  
2 It's the additional people that were included on the witness  
3 list.

4 MR. HANNA: Right. I mean, interrogatory number one  
5 says identify name, address, telephone number, place of  
6 employment, job title of any person who has, claims to have or  
7 whom you believe may have knowledge or information pertaining  
8 to any fact alleged in the pleadings. They've identified  
9 these -- these aren't even people I'm asking for that they  
10 don't think are relevant. These are people they've admitted  
11 are by virtue of the fact that they've included them in their  
12 witness list and they don't want to give us their contact  
13 information.

14 THE COURT: So Mr. Davis, there is a continuing duty  
15 to supplement an interrogatory. Why not, if you've included  
16 the people on the your witness list, why not augment your --  
17 why not supplement your interrogatory?

18 MR. DAVIS: Your Honor, to the extent that like I  
19 said to the extent that there are any names added to the  
20 witness list that are added because we think it's, they have  
21 information about the case as opposed to as I'm sure your Honor  
22 knows we don't want to waive a witness, so the witness list is  
23 probably broader than we the might be responsive to  
24 interrogatory one so if there are any people on  
25 interrogatory -- I'm sorry --

1           THE COURT: But you think that this person may have  
2 knowledge or information because you've included them on the  
3 witness list.

4           MR. DAVIS: It's witness, about the allegations in  
5 his complaint which is not the same thing as what's on the  
6 witness list, but no, we will supplement, your Honor, to the  
7 extent that we believe that any of the new names on the witness  
8 list are responsive to interrogatory one, then we'll  
9 supplement.

10          THE COURT: Why don't you just include the  
11 information? If you've included them on the witness list, why  
12 not provide Mr. Hanna with the information?

13          MR. DAVIS: We will. We will, your Honor.

14          THE COURT: You're saying to the extent that they  
15 have something relevant. I'm just saying --

16          MR. DAVIS: Your Honor, if they don't have anything  
17 relevant and we have their addresses, then we'll provide them,  
18 but we may not. I know some of these names are people that  
19 Tara Edwards mentioned in her deposition and we may not have  
20 that information.

21          THE COURT: Well then include that. You say, you  
22 know, include that.

23          MR. DAVIS: We'll include it, but if we don't --

24          THE COURT: If you know their identifying  
25 information, then provide it.

1 MR. DAVIS: We will do so.

2 THE COURT: Supplement and provide it.

3 MR. DAVIS: And we will do so, your Honor.

4 MR. HANNA: Finally, Judge, the defendant indicated  
5 that they would amend request for production 42 and they did  
6 not do that or supplement I should say, request for production  
7 42 and they've not done that.

8 MR. DAVIS: And that one's bound up. I believe we  
9 said specifically that we will address that as part of RFP 30  
10 and RFP 30 is where we're at right now with all those e-mail  
11 hits so that's, that's something that we are still trying to  
12 resolve. So it's right in the meet and confer letter that  
13 Mr. Hanna attached. We said that we'll supplement that in  
14 response to RFP 30 and that's still at issue here, so, umm --

15 MR. HANNA: We didn't move to compel this because  
16 they said they were going to supplement it and then they didn't  
17 supplement it.

18 MS. HARDY: And we're still going to provide it, your  
19 Honor, but we need to figure out this RFP 30 issue because --

20 MR. HANNA: This is not limited to e-mails though.  
21 This is beyond, this is not just e-mails.

22 THE COURT: This is all documents concerning  
23 referencing Malcolm Maddox's promotions, reassignments,  
24 disciplinary history, basis for any reprimand or discipline.  
25 What does this have to do with e-mails?



1 MR. DAVIS: We've -- your Honor, let me pull up what  
2 he's talking about in the meet and confer because again, we've  
3 turned over the responsive documents. I'll pull this out, your  
4 Honor, I'm sorry.

5 MR. HANNA: They said for RFP 42, the discovery  
6 response to RFP 30 covers any documents or any conceivable  
7 relevance of this case based on their relevance definition, but  
8 then they said nevertheless, we will agree to do a revised  
9 search based on the language below for the managerial RFP 30  
10 custodians for RFP 42.

11 MR. DAVIS: Which is what I just said, your Honor.  
12 That was the limit of what we could agree to and it was in  
13 connection with RFP 30 which is still at issue. That's  
14 precisely what I just said and like I said, as part of the  
15 figuring out RFP 30, that's what I, that's what I will produce  
16 anything that's responsive, but it's tied up to --

17 MR. HANNA: But it's not limited to e-mails.

18 THE COURT: But you did provide responsive  
19 information, but you --

20 MR. DAVIS: But to the extent that he's got these  
21 additional e-mail searches, your Honor, it's called fishing  
22 expedition, but once we've narrowed it down if there's any  
23 e-mails in the managerial custodians there that are in addition  
24 to what's already been produced, then that's what I agreed to  
25 produce.

1           THE COURT: I don't really understand because the  
2           issue is all documents concerning Malcolm Maddox's promotions,  
3           reassignments, disciplinary history, basis for any reprimand or  
4           discipline. Are you saying that you need do --

5           MR. DAVIS: Your Honor, let me explain. So we've  
6           given over his personnel file. We've given over his contract.  
7           We've given over the material that would be ordinarily stored  
8           in the course of business. That was not sufficient. Because  
9           we are already going to do this additional search in RFP 30, I  
10          told him that we'll look for it in the four managers there who  
11          are Murri, Fernandez and the other two I'm blanking out on now,  
12          but we're going to do that, the e-mail search for anything in  
13          addition, but we've already turned over his personal file which  
14          would include disciplinary history. We've turned --

15          THE COURT: Are you saying, Mr. Hanna, that there  
16          would be e-mails with reassignments, disciplinary history,  
17          basis for reprimand or discipline that are not included in the  
18          personnel file?

19          MR. HANNA: They -- if you look at their first  
20          amended response --

21          THE COURT: Okay, so can you answer the question?

22          MR. HANNA: Yes, there's e-mails and other documents,  
23          Judge.

24          THE COURT: Okay, so and other documents? I thought  
25          this was e-mails?

1 MR. HANNA: No, it's not. My request was not limited  
2 to e-mails and his response was not limited to e-mails. If you  
3 go to the -- here's what I e-mailed him with respect to this  
4 conferral. I said hi, Tom, I hope you are doing well, here are  
5 the requests. With respect to 42, in the spirit of compromise,  
6 plaintiff is willing to limit the search to electronic  
7 correspondence sent to or received by the custodians referenced  
8 in RFP 30 so limited to those custodians and, two, documents so  
9 it's not just e-mails, documents defendants stores in the  
10 regular course of business that would contain documents  
11 concerning referencing Maddox's promotions, reassignments,  
12 disciplinary history and basis for any reprimand or discipline.

13 THE COURT: So Mr. Davis, are you saying that they  
14 are -- I guess I thought that Mr. Davis was saying he's given  
15 all those documents except that something might be included in  
16 e-mail.

17 MR. DAVIS: I mean, it sounds like we're getting a  
18 meeting of the minds, but that's what I'm still agreeing to do,  
19 your Honor. We've turned over the personnel, the official  
20 files have been produced.

21 THE COURT: Are you saying that you've turned over  
22 every document that's responsive to 42 except that there might  
23 be some additional documents and e-mails?

24 MR. DAVIS: That's -- yes, that's what I -- that's my  
25 standing, your Honor. I'll reconfirm that, but that's my

1 understanding and the e-mail part is what's the hang-up here.

2 MR. HANNA: That's not what is indicated in their  
3 amended response.

4 MR. DAVIS: Your Honor, then we --

5 MR. HANNA: It says is by way of further  
6 clarification as requested in plaintiff's counsel's letter,  
7 defendants states as follows, this request is grossly overbroad  
8 and contains no limitation as to custodian or to document that  
9 would conceivably calculated to lead to discovery of relevant  
10 information. For example, all documents concerning referencing  
11 Malcolm Maddox's reassignment could conceivably be understood  
12 to include any e-mail or piece of paper that defendant's, on  
13 defendant's premises at that merely mentions the fact that  
14 Maddox became an anchor on Channel Seven, something that could  
15 conceivably be in the hands of any station employee who would  
16 receive notification of such general station-related  
17 information. The overbreadth means the defendant cannot  
18 reasonably identify whether documents responsive to this  
19 request exists without performing the unduly burdensome and  
20 inappropriate search. So my conferral was okay, fine, do it in  
21 and where it would, you know, regularly be stored, I'm not  
22 talking about the hypothetical paper airplane that has this  
23 information.

24 MR. DAVIS: Yeah and that's --

25 THE COURT: You know, I guess I see that the problem,

1 Mr. Hanna, is that if Mr. Maddox received an e-mail saying  
2 congratulations on your promotion, then that's referencing a  
3 promotion and so, you know, this is a situation where sometimes  
4 the, the better approach is all documents sufficient to show,  
5 you know, Malcolm Maddox's promotions, reassignments,  
6 disciplinary history, basis for any remand or discipline, not  
7 every e-mail that references so you're moving to, you know, the  
8 5:00 show.

9 MR. HANNA: Well, the problem is, Judge, their  
10 position is even though he went from one position to the main  
11 morning anchor, that that wasn't a promotion, they didn't  
12 promote him despite the fact that his later contracts confirmed  
13 that he got paid hundreds of thousands of dollars more, so  
14 their position is we never even promoted him so that's why I  
15 kind of have to go a little farther to prove that --

16 THE COURT: Yeah, but you want to go so far that it  
17 could be literally an e-mail from a co-worker saying  
18 congratulations on your promotion.

19 MR. HANNA: Yeah, I would think that as manager --

20 THE COURT: So and it doesn't seem like, how long was  
21 he employed there?

22 MR. HANNA: As far as that goes, Judge, we're happy  
23 to limit that temporal scope to 2015, just 2015.

24 THE COURT: So 2015, that would be covered in then  
25 the e-mail search.

1           MR. HANNA: If it's e-mail. I mean, if there's some  
2 kind of other documents that they have that they and then  
3 because they --

4           THE COURT: But I asked Mr. Davis and he said they  
5 turned over everything and the only other, the only outstanding  
6 documents would be the e-mails.

7           MR. HANNA: They said they haven't turned it over.  
8 They said it would be too hard to look.

9           THE COURT: Mr. Davis told me that and I asked him  
10 that question. He said he's turned over every document and the  
11 only other documents that might be out there are things that  
12 were within the e-mail, so based upon the, the instruction to  
13 meet and confer with the Malcolm Maddox e-mail search words  
14 that you suggested and it would appear to me to capture any  
15 promotions that occurred after Ms. Edwards made her complaint.

16           MR. HANNA: No, the e-mail searches don't say the  
17 word promotion at all.

18           THE COURT: Well, you can add promotion.

19           MR. HANNA: I mean --

20           THE COURT: But I asked Mr. Davis directly. He said  
21 the only thing that hadn't been turned over was anything within  
22 the e-mails.

23           MR. DAVIS: Right, I mean and, yeah, so just so  
24 obviously the first request was very, very, was overly-broad  
25 for reasons we've stated and my understanding based on e-mails

1 back and forth to Mr. Hanna is what I stated to the Court.  
2 Once he's limited it to documents that are in the ordinary  
3 course, then of course it was going to get turned over. He has  
4 Maddox's contracts. He has the employment file. He has all  
5 that stuff so once he's limited to the ordinary course, all  
6 that's left is the e-mails.

7 THE COURT: All right. I have the young man sitting  
8 in the back of the courtroom was supposed to be interviewed at  
9 4:00 p.m., so if there is nothing else, I'm going to say that  
10 the 42 will be included in the meet and confer over the scope  
11 of the e-mails.

12 MR. HANNA: Thank you, Judge.

13 THE COURT: How long do you think you need to file  
14 the supplemental brief regarding the attorney/client privilege?

15 MR. DAVIS: Your Honor, I have a summary judgment  
16 brief that's due Tuesday. If I could have by Friday of next  
17 week if that's possible, that would be helpful.

18 THE COURT: Mr. Hanna, does that work for you?

19 MR. HANNA: Judge, the big problem we have in this  
20 case is they haven't -- we haven't been able to conduct any  
21 depositions yet except for two so far because they've withheld  
22 all contact information and we've got to get going on  
23 discovery, so I can't --

24 THE COURT: I'm talking about the attorney/client  
25 privilege stuff and so he's asking for a week and-a-half.

1 MR. HANNA: A week and-a-half, I mean, I think that's  
2 a little excessive, but it's up to the Court at this point and  
3 what is the schedule? They're going to file and then we'll  
4 file it a couple days later or how's this going to work?

5 MR. DAVIS: Simultaneously --

6 THE COURT: No, you're going to each file because I  
7 don't need and I don't want responses, I don't want  
8 sur-replies, I don't want any of that. I just want your briefs  
9 dealing with the discrete and nuanced attorney/client  
10 privilege, five pages each on Friday is the day after, so  
11 that's the 23rd.

12 MR. HANNA: Just, Judge, for the record can you  
13 reiterate the exact points you want in the briefs so we keep it  
14 focused on that?

15 THE COURT: No, I -- seriously, I need to -- I'm  
16 supposed to -- I don't even know what his schedule is. I don't  
17 even know if he has a flight out.

18 MR. HANNA: I apologize, Judge.

19 THE COURT: And we've been on the Bench literally  
20 since, you know, 1:45 and so this is a marathon and so I hope  
21 that you captured it. I reiterated more than once what I  
22 needed regarding the attorney/client privilege to the extent  
23 that it incorporates interviews of employees, you said that the  
24 impressions of attorneys were discoverable, whether it  
25 incorporates the human resources and that investigation and



1 I -- and, umm, then you also said that Sonja and I know it's  
2 Sonja and so when you said her name, you know, it didn't  
3 register at first. Was it Ludnick?

4 MS. HARDY: Lengnick.

5 THE COURT: Lengnick. Whether Sonja Lengnick,  
6 whether she's a witness now, the things that you said, the  
7 things that they said regarding, you know, whether or not the  
8 attorney/client privilege covered those matters.

9 MR. HANNA: Thank you, Judge.

10 THE COURT: Okay.

11 MR. DAVIS: Thank you, your Honor.

12 MS. HARDY: Thank you for your time.

13 THE COURT: All right, thank you. All rise. Court  
14 is in recess.

15 (Hearing concluded at 5:25 p.m.)

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C E R T I F I C A T E

I, David B. Yarbrough, Official Court Reporter, do hereby certify that the foregoing pages comprise a true and accurate transcript of the digital voice recording of the proceedings had in this matter on Tuesday, November 13th, 2018.

12/7/2018

Date

/s/ David B. Yarbrough

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